THE CONVEYANCER
AND
PROPERTY LAWYER

No. 4. JUNE, 1937

CONDITIONS OF SALE OF LAND.

By E. O. Walford, LL.D., Solicitor.

(*Continued from p.* 260.)

Law Society's Condition.

Commencement of Title and Matters arising on the Title.

11.—Where the property is freehold, and the contract provides that title shall commence with a will, probate, or letters of administration—

(a) if the deceased died not less than twelve years before the date of the contract, a purchaser shall assume, unless the contrary appears, that the deceased was seised of the property at his death, for a legal estate in fee simple in possession, free from incumbrances, and no evidence on this point shall be required;

(b) in other cases, a purchaser shall be entitled to be furnished, at his own expense, if he so requires, with a statutory declaration by a competent declarant stating the said seisin free from incumbrances.

It is not proposed here to consider in great detail what documents constitute a good root of title, but it may be observed that in the absence of any special condition the title should commence with a document dealing with the whole legal and equitable title to the property, and such document should be sufficient to identify the property sold. A general devise by will does not comply with these conditions and is therefore not a satisfactory root of title; but if a subsequent deed more than thirty years

old recites the seisin of the testator and the title subsequently deduced is consistent with the testator's seisin it would seem that the title must be considered acceptable : *Parr* v. *Lovegrove* (1858), 4 Drew. 170. If, however, the vendor has earlier title deeds a purchaser under an open contract is entitled in such a case to production, but not an abstract, of such earlier deeds : *ibid.*

As to the Condition set out above it is conceived that the case dealt with in 11 (a) will often arise, and that as no distinction is taken between a will containing a specific devise and one containing a general devise of the property the purchaser cannot object if it is found that the abstract discloses only a general devise. Where the Law Society's Conditions apply it is therefore desirable to inquire before contract whether the will contains a specific devise of the property and, if not, to require an earlier root to be furnished if possible. Unless the will forming the root of title contains a specific devise and is that of a testator who died at least thirty years ago, it is to be remembered that an intending purchaser or mortgagee will generally press for the commencement of the title with a conveyance on sale or a first mortgage. Such a document is the most satisfactory root of title because it may reasonably be assumed that upon the occasion of a purchase or mortgage the prior title is properly investigated, and outstanding interests got in.

In *Re Gilbert and Foster's Contract* (1935), 52 T. L. R. 4, the Court had to consider this Condition. A statutory declaration by a person that he had collected the rents of the property and done repairs for the testator for twenty years was offered as complying with the Condition. Farwell, J., however, held that although such a declaration might be sufficient for an ejectment action it did not go far enough. It proved acts of ownership, but that was not sufficient, because such acts did not necessarily establish ownership in fee simple. Moreover, the purchaser was entitled to evidence that the property was free from incumbrances and there was nothing in the declaration offered to show whether any incumbrances existed.

It will be seen that if the Law Society's Condition applies a statutory declaration can only be obtained (at the purchaser's expense) when the testator died less than twelve years before the date of the contract. It will be but rarely that a purchaser accepts a title commencing with the will of such a testator; and it is suggested that where it is found necessary to accept a will, say twenty-five years old, as a root of title it is desirable to modify Condition 11 above to the effect that the purchaser shall be entitled to such a declaration as mentioned in Condition 11 (b).

Although the matters dealt with in the following pages are not confined to the actual commencement of title, it seems convenient to deal at this stage with the various statutory provisions and decisions dealing not only with the commencement of title but also with the effect of conditions as to the investigation of title or the evidence of title to be furnished by the vendor. The effect of a contract for the sale of land cannot be determined by the words of the contract alone. The result of the various conveyancing statutes passed from time to time, and now embodied in what has been termed the " legislative jungle " of 1925, has been considerably to reduce the number and length of conditions of sale, although a perusal of the Law Society's Conditions or the National Conditions will show that a " goodly number " still survive. It is accordingly necessary to consider at some length certain statutory provisions and ruling cases.

Under an open contract for the sale of freehold land a thirty years' title must be deduced (Law of Property Act, 1925, s. 44 (1)), except that where land of copyhold or customary tenure has been converted into freehold by enfranchisement, the purchaser cannot call for the title to make the enfranchisement (section 44 (6)).

By section 44 (8) of the Law of Property Act, 1925, it is declared that " a purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made inquiries in regard to matters prior to the period of commencement of title fixed by this Act, or by any other statute, or by any rule of law, he might have had notice, unless he actually makes such investigation or inquiries ".

The following observations may be made upon this sub-section:—

(1) Nothing in the sub-section prevents a purchaser from being saddled with matters of which he would have had notice if he had insisted upon deduction of title for the full period to which he was entitled under an open contract. Thus if a twenty years' title is accepted the purchaser will be deemed to have notice of restrictive covenants imposed by *or referred to* in a deed, say, twenty-eight years old, even though there is no reference whatever to such restrictive covenants in the deeds relating to the twenty years' title: *Re Cox & Neve*, [1891] 2 Ch. 109.

(2) Whether the purchaser has agreed to accept a title commencing later than the statutory period or has insisted upon the full period being covered by the abstract he will

be bound by any matters which he discovers *aliunde* and may object to the title if he discovers by any means that there are any restrictive covenants affecting the property, even if they were created by a deed executed many years prior to the full period for which title should be deduced under an open contract. Thus in *Re Cox & Neve* (*supra*), whilst the purchaser was investigating title he learned from a third party of a deed executed in 1847 (about forty-three years before the date of the contract for sale), which imposed restrictions upon the user of the land purchased. The contract provided that the title should commence with a mortgage executed in 1852, and therefore the restrictive covenants were created not only prior to the root of title specified in the contract, but also prior to the full statutory period of forty years (in accordance with section 1 of the Vendor and Purchaser Act, 1874). North, J., observed that if a purchaser chose to take property with a thirty-eight years' title the purchaser had in his opinion constructive notice of that which he would actually have known if he had required a forty years' title to be shown and had investigated the title during that period, and held that the purchaser having acquired express notice of the restrictive covenant was bound by it, and was entitled to be relieved from the contract, since the existence of such a covenant formed a valid objection to the title. And see *Re Nisbet & Potts*, [1906] 1 Ch. 386.

(3) It is unlikely that a deed can be found which is dated exactly thirty years prior to the contract for sale, and the rule is that the title must be carried back so far as is necessary in order to arrive at a deed which constitutes a good root of title: *Re Cox & Neve* (*supra*).

In the absence of any other provision in the contract the purchaser is limited in his investigation of the title not only by section 44 of the Law of Property Act, 1925, but also by section 45 of the same Act as follows:—

(1) He cannot require the production of any abstract or copy of any deed, will or other document dated or made before the date agreed upon in the contract or stipulated by law for the commencement of the title even though it might create a power subsequently exercised by an abstracted document: section 45 (1) (a). Nor can the purchaser require any information or make any requisition or objection with regard to any such document, or the title prior to the date fixed by the contract or stipulated by law for

the commencement of the title even if it is recited in the abstract furnished, or an undertaking to produce it embodied in the abstract supplied or otherwise shown to exist: section 45 (1) (b).

(2) The purchaser must assume unless the contrary appears that the recitals contained in any abstracted document of any deed, will or other document forming part of the title prior to the date fixed by law or contract for commencement of the title are correct and give all the material contents thereof and that every such document was duly executed by all necessary parties and perfected by fine, recovery, acknowledgment, inrolment or otherwise so far as is requisite: section 45 (1).

(3) The section does not preclude the purchaser from requiring production or an abstract or copy of

(a) A power of attorney under which an abstracted document is executed. It would therefore seem that even in the case where the power of attorney is executed before the root of title, the purchaser can enforce his right under section 125 of the L. P. Act, 1925, as amended by the Law of Property (Amendment) Act, 1926, to require the power of attorney to be filed (unless it is to be handed over as relating only to the transaction affecting the title) and insist upon receiving at the vendor's expense a copy. As to registered land, see the special provisions of the proviso to subsection 1 of section 125.

(b) Any document creating or disposing of an interest, power or obligation subject to which any part of the property is disposed of by an abstracted document.

(c) Any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

This section prevents a purchaser not only from inquiring of the vendor as to the prior title but also from objecting to such prior title. If the purchaser were merely prevented from making inquiries *of the vendor*, this would not preclude him from objecting to the title if (from any other source) he ascertained that the earlier title was bad : *Osborn* v. *Osborn* (1870), 18 W. R. 421. Thus, the abstract delivered may show that the title of the alleged owner at the date of the stipulated root of title was defective. The purchaser does not, by objecting to the title on this account, make

any inquiry of the vendor. In *Waddell* v. *Wolfe* (1874), L. R. 9 Q. B. 515, the abstract was to commence with an underlease dated in May, 1869, and no requisition or inquiry was to be made in respect of the lessor's or superior lessor's title. The purchaser discovered that the lessor's interest was mortgaged and the legal estate outstanding in the mortgagee on the date when the lease was granted, and objected to the title on that account. His objection was upheld.

Similarly the purchaser may raise objections to the title where the condition is simply that the earlier title is not to be deduced and the purchaser discovers from some other source that the earlier title is defective : *Sellick* v. *Trevor* (1843), 11 M. & W. 722. In all cases the result depends upon the exact formula used in the condition. The decisions are not easy to reconcile. The following are cases in which the purchaser has been held not to be debarred from raising objections discovered *aliunde* :—

(1) Purchaser not to "call for" lessor's title. Purchaser establishes that the lease is an underlease : *Madeley* v. *Booth* (1848), 2 De G. & S. 718.

(2) Vendor not to be compelled to "produce, prove or show" the lessor's title : *Blake* v. *Phinn* (1847), 3 C. B. 975.

(3) Purchaser not to require proof or production of lessor's title : *Darlington* v. *Hamilton* (1854), Kay 550.

(4) Vendor not to be obliged to "produce" the lessor's title : *Shepherd* v. *Keatley* (1834), 1 C. M. & R. 117.

(5) No requisitions to be made in respect of the title prior to a certain deed : *Re Davys and Saurin* (1886), 17 L. R. (Irish) 334.

(6) Vendor's title not to be questioned nor the vendor bound to go behind the same : *Geohegan* v. *Connolly* (1859), 8 Ch. R. (Irish) 598.

(7) Condition against investigation of prior title. Objection sustained in respect of a flaw in the title appearing from the abstract delivered by the vendor : *Taylor* v. *Martindale*, (1842), 1 Y. & C. C. C. 658.

In all the above cases it may be said there was no clear indication that the purchaser was intended to be precluded from setting up a defect actually discovered, as distinct from requiring the vendor to produce evidence in connection with such matters. The following cases, however, require more detailed comment :—

(1) *Hume* v. *Bentley* (1852), 5 De G. & Sm. 520, where the purchaser of leasehold property was able to establish that the lessor had no power to grant the lease. The contract contained a condition negativing the right to make

"inquiries" as to the lessor's title, and stating that the lessor's title would not be deduced. Purchaser held to be bound to complete the purchase, and specific performance was decreed accordingly. Comparing this case with the later case of *Waddell* v. *Wolfe*, *supra*, it will be seen that the two conditions are very similar; but in the last mentioned case it was apparently considered from the context that the only inquiries intended to be prohibited were inquiries of the vendor.

(2) In *Re National Provincial Bank, Ltd., and Marsh*, [1895] 1 Ch. 190, the prior title was not to be required, investigated or objected to, and this condition was held to be effective to prevent the purchaser from recovering his deposit, where he had discovered *aliunde* a defect in the prior title. This case is useful as illustrating the difference between cases in which the purchaser seeks a common law remedy, and those in which he seeks to establish that the equitable remedy of specific performance should not be afforded to the vendor. The purchaser was in fact able to establish a serious flaw in the title by reason of what had taken place prior to the stipulated root of title, and North, J., in refusing to order the return of the deposit, pointed out that the order made did not in any way indicate that specific performance would be decreed. In the same case the learned Judge remarked that he was unable to distinguish between a condition that a certain title should not be inquired into, and a condition that such title should not be "required, investigated or objected to", and observed that no force could be given to the words stating that the title should not be inquired into except as meaning that it should be accepted without objection or inquiry. It would seem, therefore, that even if the condition precludes only "inquiries" and not "investigation", or "objections", the purchaser cannot set up objections discovered *aliunde*, unless there is something in the context which narrows the construction of the word "inquiries", as in *Waddell* v. *Wolfe*, *supra*. The case of *Smith* v. *Robinson* (1879), 13 Ch. D. 148, may appear to conflict with this proposition. There the condition stated that no earlier or other title should be required or inquired into by the purchaser; but the purchaser was allowed to insist upon an objection to the prior title disclosed by the vendor himself by accident. This case is, however, best treated as establishing that such a condition is not effective

to enable the vendor to enforce specific performance where the condition has been used as a means of cloaking an incumbrance or defect prior to the stipulated root of title, and not cleared off since that date.

(3) In *Spratt* v. *Jeffery* (1829), 10 B. & C. 249, the vendor sold a property " as he held the same ", and the purchaser was not to " require " the lessor's title. A defect in the lessor's title was established, but the purchaser was compelled to complete. This case was mentioned in *Phillips* v. *Caldcleugh* (1868), L. R. 4 Q. B. 159, by Lush, J., who considered that it was capable of support only on the ground that the words " as he holds the same " mean " with such title as the vendor has ". This view is in conformity with the earlier decision of *Freme* v. *Wright* (1819), 4 Madd. 364, where the vendor sold an interest in property " as he lately held the same " it being stated that an abstract of the vendor's title could be seen at a named place. The purchaser was required to accept such title as the vendor could deduce. On this aspect of such conditions see also *Fowler* v. *Willis*, [1922] 2 Ch. 514 (overruling *Gould* v. *Birmingham, etc., Bank*, 58 L. T. 560), where it was held that an option, given to a lessee, of purchasing " the lessor's interest " did not entitle the lessee to call for an assurance of the reversion free from any incumbrance affecting it at the time of the option, but only of such interest as the lessor had.

Where special conditions are incorporated by statute or by express provision, and the purchaser seeks specific performance or relief from the contract and return of the deposit, or the vendor seeks specific performance or relief from the contract and forfeiture of the deposit, the result may be different according to whether the purchaser or the vendor is the party taking the proceedings. If the purchaser seeks specific performance he can only obtain a decree upon the strict terms at law of the contract : see *Cordingley* v. *Cheeseborough* (1862), 4 De G. F. & J. 379.

Although either the vendor or the purchaser may successfully *resist* proceedings for specific performance on the ground of hardship, mistake or unfairness, none of these grounds will enable a purchaser to obtain any modification of the strict terms of the contract : *Re Terry and White's Contract* (1886), 32 Ch. D. 14; *Re Courcier and Harrold's Contract*, [1923] 1 Ch. 565. It is, however, true that if there is some slight discrepancy in the quantity of the property or other comparatively trifling deficiency the Court may order specific performance with compensation whether the suit

is brought by the vendor or the purchaser, provided that no injury will result to third parties, *Thomas* v. *Dering* (1837), 1 Keen 729, or inflict serious hardship upon the vendor, *Mortlock* v. *Buller* (1804), 10 Ves. 292 (see p. 315).

Where the purchaser claims specific performance the order will direct an inquiry into title. He may be said to take such an inquiry at his own risk. Thus, if the requisitions which he has taken are not upheld he will be saddled with the vendor's costs of the proceedings : *Lyle* v. *Yarborough* (1859), John. 70. Even if he has raised proper objections which cannot be remedied and which the Court upholds, he is in little better plight, for he must then either accept the title as shown, in spite of the defects revealed, and pay the costs of the inquiry into title (*Bennett* v. *Fowler* (1840), 2 Beav. 302), or he must allow his action for specific performance to be dismissed, in which case he will be left to pay his own costs, this being the practice of the Chancery Division in such cases : *Keen* v. *Mear*, [1920] 2 Ch. 574; *Malden* v. *Fyson* (1847), 11 Q. B. 292. Under the old practice applying to such cases the bill would be dismissed without prejudice to the purchaser's right to bring an action at law to recover damages, but according to the rule in *Tamplin* v. *James*, *infra*, the Court should proceed in the same action to consider the damages; but such damages, as will be seen later, comprise only the deposit and interest thereon and the costs of investigating the title. No costs of the action will be allowed to the purchaser.

If, on the other hand, the vendor is the party taking proceedings, for specific performance, and it transpires that he cannot make title according to the contract, the purchaser may rescind the contract. In that event the purchaser is in a rather better position; for he will recover—

(a) The deposit with interest thereon;

(b) The costs of inquiry into title and those of investigating title and also *the costs of the action.*

He will also be entitled to a lien on the land sold for securing the deposit and costs as last mentioned; but not to general or special damages except in cases where the vendor has been guilty of fraud or other improper conduct : *Tamplin* v. *James* (1879), 15 Ch. D. 215; *Pease* v. *Courtney*, [1904] 2 Ch. 503; *Bain* v. *Fothergill* (1874), L. R. 7 H. L. 158; and see *Pearl Life Assurance Co.* v. *Buttenshaw*, [1893] W. N. 123.

If the purchaser is in default and the vendor elects to take proceedings for the recovery of damages instead of suing for specific performance, he may either limit his claim to the recovery of expenses incurred or may claim as damages the loss occasioned

by the non-completion of the contract : *De Bernardy* v. *Harding* (1853), 8 Ex. 822; *Laird* v. *Pim* (1841), 7 M. & W. 474; *York Glass Co., Ltd.* v. *Jubb* (1926), 134 L. T. 36. The usual course taken by the vendor is to declare the deposit forfeited and to resell, whereupon he will, in the absence of any special condition, recover from the purchaser the loss arising on the resale, after deducting the amount of the deposit : *Ockenden* v. *Henly* (1858), 27 L. J. Q. B. 361. If the contract gives the vendor the right to forfeit the deposit and resell the property this does not prevent the vendor from recovering damages for breach of contract : *Harold Wood Brick Co., Ltd.* v. *Ferris*, [1935] 2 K. B. 199 (C. A.).

Where the purchaser seeks to be relieved from the contract, however, he is not in so good a position. As was said in *Flureau* v. *Thornhill* (1776), 2 Wm. Bl. 1078, a contractor for the purchase of real estate to which the title proves, without collusion, defective, is entitled to no satisfaction for the loss of his bargain, beyond the return of the deposit and interest thereon.

The rule to this effect is now known as the rule in *Bain* v. *Fothergill*, a case decided by the House of Lords in 1874 (L. R. 7 H. L. 158). The vendor is, however, bound to take all reasonable steps to implement the contract, and if he fails to do so or is guilty of fraud, the purchaser may recover substantial damages : *Bain* v. *Fothergill*, *supra*. Instances of such cases are as follows :—

(a) Property mortgaged for an amount exceeding the purchase price and the vendor fails to obtain the joinder of the mortgagee : *Re Daniel*, [1917] 2 Ch. 405.

(b) Application to Court for leave to sell necessary; but vendor neglects to make it : *Braybrooks* v. *Whaley*, [1919] 1 K. B. 435.

(c) Lessor's consent to assignment of leasehold property required; but vendor persuades lessor to refuse consent : *Day* v. *Singleton*, [1899] 2 Ch. 320.

(d) Mortgagees selling under their power of sale deliberately refrain from obtaining possession from the borrower : *Engell* v. *Fitch* (1869), L. R. 4 Q. B. 659.

Curtis v. *French*, [1929] 1 Ch. 253 is difficult to understand or to reconcile with other authorities. There it appears to have been recognised by the Court that the vendor had not made any effort to fulfil his obligation to obtain vacant possession in accordance with the contract. The position was that the tenant claimed to be protected by the Rent Restrictions Acts, and refused to quit. The tenancy was stated in the particulars to be a tenancy by sufferance. Notwithstanding this representation it was held that the vendor was protected by a condition in the contract that no error, misstate-

ment, or omission should annul the sale or entitle either party to compensation. Accordingly damages could not be recovered for loss of profit. It would seem that this decision may best be supported on the ground that the vendor's representation as to the tenancy was an innocent one, and although it is true that the vendor had not actually put the legal status of the tenant to the test by proceedings, it is to be remembered that the Court will not in general require a vendor to embark upon doubtful and expensive litigation in such cases but will rather relieve the vendor upon the basis that the deposit with interest thereon (generally at £4 per cent.) and expenses of investigating the title be refunded to the purchaser. *Curtis* v. *French* was severely criticised by Mr. Cyprian Williams (see 66 *Law Journal* 339); but it must be remembered that if a vendor, having merely an option for purchase and not knowing whether his vendor can make a title, agrees to sell to a third party, and is unable to implement his contract owing to the fact that the original vendor has no title, the third party cannot recover damages for loss of his bargain. The case of *Hopkins* v. *Grazebrook* (1826), 6 B. & C. 31, decided that he could do so, but this decision was expressly overruled by *Bain* v. *Fothergill*, *supra*. The carelessness or recklessness of the vendor in *Curtis* v. *French* was, it is submitted, no greater than that of a vendor who has no idea whether he will in fact be able to make any title at all.

There is a distinction between the cases last dealt with and those in which the purchaser, being bound at law by statutory or express conditions limiting his right to object to the title, is relieved in equity from the performance on the contract on the ground of unfairness, innocent misrepresentation, want of mutuality or on other equitable grounds. The leading case on this point is *Re Scott and Alvarez*, [1895] 1 Ch. 596; [1895] 2 Ch. 602, the details of which are as follows.

A leasehold property was sold subject to a condition providing that the title should commence with the lease and continue with a certain assignment, the purchaser being debarred from taking any objection in respect of the intermediate title. Having discovered certain matters raising a doubt as to the intermediate title, though not conclusively establishing that such title was bad, the purchaser took out a vendor and purchaser summons claiming to be relieved from the contract on the ground that the title was not one which should be forced upon a purchaser. It was, however, decided that the mere casting of suspicion upon the intermediate title was not a sufficient ground for refusing specific performance, the onus being upon the purchaser to show definitely that the vendor's title was bad: *Re Scott and Alvarez*, [1895]

1 Ch. 596. In subsequent proceedings the purchaser having ascertained that the intermediate title comprised a forged deed and an assurance by a trustee who had conveyed as beneficial owner, specific performance was refused, but the purchaser was not allowed to recover his deposit : *Re Scott and Alvarez*, [1895] 2 Ch. 603.

Prior to 1926, although a purchaser who agreed to accept a limited title or was by statute compellable to accept a certain period of title might be able to obtain relief from specific performance as in *Re Scott and Alvarez*, upon the ground that the title was not one which a Court of equity should compel a purchaser to accept, he would nevertheless forfeit any deposit paid. This illogical position has long been criticised by conveyancers, and the Court has now been given a discretion in such cases. Before dealing with this point it is necessary to draw attention to the provisions of sub-section 11 of section 3 of the Conveyancing Act, 1881. It was provided by that section (now re-enacted by section 45 (11) of the Law of Property Act, 1925) that none of the statutory conditions as to title in that section (such as those precluding a purchaser from requiring production of documents prior to the root of title) should bind a purchaser to complete his purchase in any case where, on a contract made independently of that section, and containing similar provisions, specific performance of the contract would not be enforced against the purchaser by the Court. In other words, the statutory provisions limiting the purchaser's rights are not to be deemed to oust the jurisdiction of Courts of equity to relieve the purchaser from specific performance in cases where such relief would have been granted prior to the Act in respect of a contract containing stipulations as to title, abstract, etc., similar to those set out in the section (Conveyancing Act, s. 3; Law of Property Act, s. 45).

The right to recover the deposit was, however, a common law remedy and although it might reasonably have been thought that Courts of equity would restrain a vendor from profiting from an unconscionable bargain by retaining a deposit paid to him under such a contract, it is clear that they did not do so : *Re Scott and Alvarez, supra*; *Best* v. *Hamand* (1879), 12 Ch. D. 1; *Beyfus* v. *Lodge*, [1925] Ch. 350. The last case is a very striking example of the rigid enforcement *at law* of conditions of sale which require a purchaser to assume that which the vendor knows to be false, the position being that the receipt for rent was, by virtue of the conditions of sale, to be conclusive evidence that all the covenants of the lease had been complied with. In fact the vendors had recently received dilapidation notices requiring that the property be put into repair in accordance with the lease. Whilst specific

performance was refused the condition was held to be good at law, with the result that the purchaser was unable to recover his deposit. (Compare and distinguish *Hone* v. *Gakstatter* (1909), 53 S. J. 286, *infra*.)

The only cases in which the purchaser could recover his deposit where the contract was entered into before 1926 were as follows :—

(i) Vendor unable to show effective power of sale or title to the property in accordance with the conditions of sale.

E.g. : Attorney vendor unable to show that power still effective : *Webb* v. *Kirby* (1856), 7 De G. M. & G. 376. Power to determine lease exercisable by lessor and not disclosed by contract : *Weston* v. *Savage* (1879), 10 Ch. D. 736. On sale of licensed premises, vendor unable to procure transfer of licence : *Bryant* v. *Beattie* (1838), 4 Bing. N. C. 254. Vendor induced lessor to withhold licence to assign : *Day* v. *Singleton*, [1899] 2 Ch. 320.

(ii) Non-disclosure or misrepresentation by vendor.

E.g., property described as a rental with reversionary interest and as an " eligible investment ". In fact, under a local Act a company had compulsory powers of purchase; but no notice of this Act was given to the purchaser : *Ballard* v. *Way* (1836), 1 M. & W. 520. On sale of leasehold property existence of unusual covenants not disclosed to purchaser before contract : *Bishop* v. *Taylor* (1891), 60 L. J. Q. B. 556. (Note, however, that the particular covenant objected to in that case, namely, a covenant not to assign without licence, such licence not to be unreasonably withheld, would probably now be regarded as usual.) Failure to disclose restrictive covenants affecting a freehold property : *Hone* v. *Gakstatter*, *supra*. Dilapidation notice served by lessor not disclosed on sale of lease, even though the purchaser is aware that the property is in a bad condition : *Stevens* v. *Adamson* (1818), 2 Stark 422. Although a vendor is under no liability to disclose patent defects in property, *e.g.*, a bulging wall or general dilapidations, where no notices have been served in respect of these matters, he *is* bound to disclose latent defects known to him whether in relation to the subject-matter or the title and therefore where a party wall notice and award consequent on such notice were not disclosed by a vendor the purchaser was held to be entitled to rescind the contract and to recover the deposit together with his costs of investigating the title. It was laid down by Joyce, J., in this case that a vendor was under an obligation to

disclose material defects in the title or in the subject-matter where such defects are exclusively within his knowledge, or are such that the purchaser could not be expected to discover them for himself with the care ordinarily used in such transactions: *Carlish* v. *Salt*, [1906] 1 Ch. 335 (at p. 341).

With regard to rights of way which are physically evident it was at one time considered that such rights might be considered to be patent defects, but the case of *Simpson* v. *Gilley*, [1922] 92 L. J. Ch. 194, established that where a property is sold as unincumbered freehold the existence of all rights of way known to the vendor must be specifically disclosed and cannot be covered by a general condition stating that the property is sold subject to all rights of way and other easements. The purchaser was accordingly allowed to rescind the contract and to recover his deposit.

We return now to the class of case in which the purchaser is bound at law by the conditions of sale, statutory or express. We have seen that prior to the passing of the Law of Property Act, 1925, the purchaser was unable in such cases in the absence of fraud, even in spite of circumstances really amounting to "sharp practice", to recover the deposit. By section 49 of the Law of Property Act, 1925, it is provided that "where the Court refuses to grant specific performance of a contract, or in any action for the return of the deposit, the Court may, if it thinks fit, order the repayment of the deposit". Now this is a very salutary provision, since it has enabled the Court, in spite of very stringent conditions, to decide that although the conditions are wide enough to cover the defect, non-disclosure or omission of which the purchaser complains, it would be inequitable to allow the vendor to retain the deposit. There have been few reported decisions under this section, but two cases may be mentioned in which resort has been made to this discretionary power. In *Hunt (Chas.), Ltd.* v. *Palmer*, [1931] 2 Ch. 287, certain leasehold premises had been sold under the National Conditions of Sale which provide that the purchaser of leasehold property is deemed to purchase with full notice of the contents of the lease under which the vendor holds the property whether availing himself of the opportunity of inspecting the lease or not. The particulars described the lease as "valuable business premises". In point of fact the lease contained a covenant prohibiting the lessee from carrying on any business except (substantially) that of the making and sale of ladies' clothing and the business of a fancy draper, so that quite apart from the

purchaser's immediate requirements, the marketability of such a lease was very seriously restricted. The Court, in addition to holding that the words "valuable business premises" were misleading and refusing to decree specific performance, made an order for the return of the deposit. Again, in *Bellotti* v. *Chequers Development, Ltd.* (1936), Estates Gazette 362, Mr. Justice Hilbery, dealing with a case in which there had been an innocent misrepresentation, stated that if the point in issue were covered by one of the conditions of sale he would apply the equitable doctrines applied in the case last dealt with, and ordered the return of the deposit as well as rescission of the contract.

Before concluding our general observations upon title certain further statutory provisions should be mentioned.

By section 45 (6) of the L. P. A., 1925, it is provided as follows :—

Section 45 (6).—"*Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.*"

The above provision does not in any way relieve the vendor from deducing and abstracting in chief the title for the statutory period under an open contract, and it may be taken that a recital in a deed upwards of twenty years old of the seisin of the vendor is no answer to a demand for an abstract commencing according to the contract or, in the case of an open contract, commencing with a good root of title at least thirty years old : *Re Wallis & Grout*, [1906] 2 Ch. 206, not following the earlier case of *Re Bolton and The London School Board* (1878), 7 Ch. D. 766. Generally the purchaser is entitled to a complete abstract in chief containing every link in the title. The requirements of the purchaser should not, however, be pressed to unreasonable lengths. Thus where title was shown under the will of a mortgagee a deed dated after the date of the mortgagee's death recited that the mortgagee had by will bequeathed his personal estate to his executors and had devised all his freehold and copyhold property vested in him by way of mortgage to his executors subject to the equity of redemption affecting such property. As the recital contained all the material information which the purchaser could require, it was held that he could not insist upon the formality of an abstract in chief of the will. *Re Ebsworth and Tidy's Contract* (1889), 42 Ch. D. 23. On the other hand, the purchaser's solicitors should note that there is a vast distinction between evidence and

verification. Thus, in the case just dealt with the material supplied was sufficient to enable the purchaser to verify the terms of the will, which a prudent purchaser would undoubtedly do. So the recital of the death of one of several joint tenants may be sufficient, but the usual search would be made. The essential point to be borne in mind is that although the provision is binding upon the purchaser unless he can actually prove that the recital is incorrect, the section cannot operate by way of estoppel so as to bind third parties, or affect or prejudice their interests, and if by any mischance the recital is shown to be incorrect after completion, the purchaser may find not only that he has no title, but possibly no remedy of any practical value. Cf. *Re Balen & Shepherd's Contract*, [1924] 2 Ch. 365.

Another condition to be borne in mind when framing or perusing conditions of sale is contained in section 48 of the L. P. A., 1925.

Section 48.—(1) *Any stipulation made on the sale of any interest in land after the commencement of this Act* [*i.e.*, after December 31, 1925] *to the effect that the conveyance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any interest in land agreed to be purchased, shall be void; and if a sale is effected by demise or sub-demise, then, for the purposes of this subsection, the instrument required for giving effect to the transaction shall be deemed to be a conveyance:*

Provided that nothing in this subsection shall affect any right reserved to a vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared, or to charge a reasonable fee therefor, or, where a perpetual rentcharge is to be reserved as the only consideration in money or money's worth, the right of a vendor to stipulate that the draft conveyance is to be prepared by his solicitor at the expense of the purchaser.

(2) *Any covenant or stipulation contained in, or entered into with reference to any lease or underlease made before or after the commencement of this Act—*

(a) *whereby the right of preparing, at the expense of a purchaser, any conveyance of the estate or interest of the lessee or underlessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or underlessor or his solicitor; or*

(b) *which in any way restricts the right of the purchaser to have*

such conveyance carried out on his behalf by a solicitor appointed by him;

shall be void:

Provided that, where any covenant or stipulation is rendered void by this subsection, there shall be implied in lieu thereof a covenant or stipulation that the lessee or underlessee shall register with the lessor or his solicitor within six months from the date thereof, or as soon after the expiration of that period as may be practicable, all conveyances and devolutions (including probates or letters of administration) affecting the lease or underlease and pay a fee of one guinea in respect of each registration, and the power of entry (if any) on breach of any covenant contained in the lease or underlease shall apply and extend to the breach of any covenant so to be implied.

(3) *Save where a sale is effected by demise or sub-demise, this section does not affect the law relating to the preparation of a lease or underlease or the draft thereof.*

(4) *In this section "lease" and "underlease" include any agreement therefor or other tenancy, and "lessee" and "underlessee" and "lessor" and "underlessor" have corresponding meanings.*

Very briefly, the effect of this section may be stated as follows:

(a) Stipulations on sale or in leases requiring that the conveyance or assignment of freehold or leasehold property or the registration of the purchaser's title shall be carried out by the vendor's or lessor's solicitor are void; and a sale carried out by the grant of a lease at a ground rent coupled with the payment of a substantial premium is an assignment for this purpose. But a vendor can furnish a form of conveyance from which the draft is to be prepared, and charge a reasonable fee for it.

(b) Where a rentcharge is the sole consideration for a conveyance the vendor can (in accordance with old established practice) require that the conveyance be prepared by his own solicitor at the purchaser's expense.

(c) Where the right to prepare dealings by the lessee is reserved to a lessor in a lease, the section substitutes an obligation to register the dealing and pay a registration fee of £1 1s.

(d) Agreements for the grant of leases not in the nature of sales (*e.g.*, leases at rack rents) may validly provide that the lease is to be prepared by the lessor's solicitor.

There is, however, nothing whatever to prevent vendors or lessors from requiring payment of the vendor's or lessor's solicitor's

charge for work normally done *on the vendor's or lessor's behalf*, as part of the terms of an agreement.

The Scale Committee of the Law Society recently considered the question of the desirability of conditions of sale providing that the purchaser should be entitled to a free conveyance of the property agreed to be purchased. The conclusion arrived at was that there was no legal objection to such a condition. The Committee, however, drew attention to the fact that the vendor's solicitor should see that the conveyance is in proper form and contains any necessary acknowledgment in respect of deeds, and further that it effectively vests in the purchaser the estate which he has agreed to purchase. Attention is also drawn by the Committee to the fact that there should be no advertisement that the vendor's solicitor is prepared to undertake the work of carrying out the conveyance, or that he will carry out the work at a cut rate. Generally, the purchaser should receive a complete examined abstract of title and search certificates so as to be in a position to deduce a satisfactory title to a mortgagee or purchaser.

The following opinions of the Law Society (see Law Society's Handbook), in relation to cases where the purchaser is to have a free conveyance, may be of interest:—

(a) No provision as to preparation of conveyance. Purchaser employed his own solicitor and the Council decided that the vendor was not bound to pay the purchaser's solicitor's charges (Opinion 647).

(b) Vendor is bound to furnish and verify his title in the usual way, each party paying his own costs where the purchaser employs his own solicitor. If the purchaser elects to take a free conveyance the vendor can insist on the conveyance being prepared by his own solicitor. A "free conveyance" includes stamp duty (Opinion 647).

It seems clear that any condition contained in a contract entered into after December 31, 1925, which purports to *bind* the purchaser to accept a conveyance in a form to be prepared by the vendor's solicitor (whether at the purchaser's expense or not) is void under the section set out above.

Where the conditions stated that purchasers might have a free conveyance, but did not stipulate that purchasers who agreed to accept a free conveyance should not be entitled to investigate the title, it was held that the purchaser could require an abstract to enable him to investigate the title: *Re Pelly & Jacob's Contract* (1899), 80 L. T. 45.

Law Society's Condition of Sale.

RENTCHARGES AND FREEHOLD PROPERTY SUBJECT TO RENTCHARGES.*

12.—(1) Where the property is a perpetual or terminable rentcharge created by an instrument—

(a) the abstract of title shall commence with that instrument;

(b) if that instrument is dated more than thirty years before the date of the contract, the title shall be taken up again as provided by the contract, or, if no such provision is made, with a conveyance or other disposition made not less than thirty years before that date;

and a purchaser shall not be entitled to investigate, or inquire into, the intermediate title.

(2) Where the property is freehold and is sold subject to a perpetual or terminable rentcharge—

(a) the abstract shall include the instrument, if any, creating the rentcharge;

(b) on production of the receipt for the last payment due in respect of the rentcharge before the date of the actual completion of the purchase, a purchaser shall conclusively assume that all the covenants and provisions of the instrument creating the rentcharge have been duly performed and observed up to the date of actual completion of the purchase, or that all breaches, if any, of such covenants and provisions have been effectually waived up to that date;

(c) no evidence, besides the evidence, if any, in the possession or control of the vendor or his trustee or mortgagee, shall be required of the title or authority of the person giving such receipt.

(3) The instrument creating the rentcharge sold, or the instrument imposing the rentcharge on the land sold (as the case may be) or an abstract or copy thereof may be inspected by the purchaser at the office of the vendor's solicitors, for a

* The observations of practitioners in Manchester and other towns where rentcharges are common upon this condition and the comments here made would be welcomed by the writer.

period of seven days preceding the sale, and in the sale room at the time of sale, and the purchaser, whether he makes such inspection or not, shall be deemed to have notice of all the contents of the instrument, and the sale shall not be affected by any partial, incomplete or inaccurate statement in the contract.

This condition deals with two classes of case. First, where the subject-matter of the sale is itself a rentcharge and secondly where a freehold property is being sold subject to the rentcharge.

Thus A, being seised in fee simple of Whiteacre, may sell it to B for a specified sum creating a new rentcharge, *i.e.*, a yearly sum issuing out of the land, which the purchaser and his successors are to pay in addition to the specified sum agreed upon. Alternatively A may, and often does, sell the land on the basis that the sole consideration is a rentcharge to be paid by B and his successors.

If A then sells his rentcharge sub-section (1) of the condition will apply and the abstract of title will commence with the conveyance creating the rentcharge. If such conveyance is dated more than thirty years before the rentcharge is sold then the position under this condition is satisfactory; for the title must be taken up again with a disposition not less than thirty years before the date of the contract for sale. If, however, the rentcharge was created only two or three years before the date of the contract the condition does not afford to a purchaser sufficient protection. It is true that upon a contract to *grant* a rentcharge the vendor is bound to show title to the land out of which the rentcharge is intended to issue in like manner as if the land were the subject-matter of the sale: *Beddington* v. *Attlee*, 35 Ch. D. 317; *Re Stewart*, 41 Ch. D. 494. It does not necessarily follow that this right is always exercised, or that a perfect title has been deduced upon the grant of the rentcharge, and if therefore the purchaser accepts this condition the risk is that the person who purported to create the rentcharge had no title to the land on which the rent is purported to be charged. Attention is drawn to the necessity in such cases of inserting in the special conditions a provision that the title to the land on which the rent is charged shall be deduced, such title to commence with a specified root of title not less than thirty years old. Whilst the purchaser is normally safe in relying upon the Law Society's General Conditions of Sale so far as concerns the commencement of title (whether by reason of the express conditions therein, or the operation of statutory provi-

sions) when the purchaser's rights are not cut down by the Special Conditions, it is obvious that Condition 12 (1) (a) may form a trap to any purchaser who assumes that title to the land for the usual thirty years period will be deduced, notwithstanding the fact that the rentcharge was created only a few years prior to the contract; but Special Condition No. 5, which is expressly provided for the insertion of particulars of the deed forming the root of title, should be a sufficient reminder. At the same time it is suggested that an addition might be made to Condition 12 requiring the vendor, if the rentcharge is to be created by the vendor or was created less than thirty years before the date of the contract, to deduce title to the land subject or to be made subject to the rentcharge for a period of not less than thirty years before the date of the contract, the title to commence with a document constituting a good root of title.

The condition in question does not seem altogether appropriate where the actual transaction is an agreement to grant a rentcharge and in this case it will be seen that even Special Condition No. 5: "The title shall commence with . . ." does not meet the point. It might, however, be met by the addition to the general condition of the words suggested above, and a marginal note against Special Condition No. 5 referring to General Condition No. 12 in the case of sales of rentcharges. The General Condition does not preclude the purchaser from requiring the vendor of an existing rentcharge to show that he is in actual receipt of the rent. It is essential that the purchaser should satisfy himself upon this point; for if there has been no payment of the rent for twelve years past the right to recover the rent may have become barred by virtue of the Statute of Limitations. Under the Real Property Limitation Acts, 1833 and 1874, subject to certain exceptions not suitable for discussion in this place, proceedings for the recovery of any land or rent can only be taken within twelve years (or if the persons entitled thereto have during the whole period been subject to disabilities, thirty years) from the time when the right to recover the land or rent arose. The term "rent" in this connection includes "rentcharge": *Jones* v. *Withers* (1896), 74 L. T. 572. The appropriate action is therefore to inquire of the vendor the name and address of the person paying the rentcharge and the date when it was last paid, and then to ask that person to confirm the information given.

Another important practice point arises in connection with rentcharges. Under section 79 of the Companies Act, 1929, charges on land or any interest therein created after July 1, 1908, are required to be registered with the Registrar of Companies within

twenty-one days after the creation of the charge, and if this registration is not effected the charge is void as against the liquidator and creditors of the company. A rentcharge creates a charge on land. Consequently—

(1) If a company contracts to sell a rentcharge to be charged on its own land the purchaser must see that it is registered within the period above mentioned, particularly as any extension of the time is discretionary and can only be obtained upon application to the Court, and such extension may be subject to the rights of other parties arising meanwhile.

(2) Similarly if an individual contracts to sell a rentcharge already created by a company by a document executed after July 1, 1908, and charged upon land vested in that company the purchaser should for the same reason see that registration was effected within twenty-one days from the original creation of the rentcharge. The conveyance of the rentcharge does not create any new charge and no further registration appears to be required. It will be necessary to revert to the question of registration when dealing with the sale of land subject to rentcharges (Condition 12 (2)).

By section 121 of the Law of Property Act, 1925, it is enacted as follows :—

Section 121.—(1) *Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the annual sum shall have such remedies for recovering and compelling payment thereof as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.*

(2) *If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.*

(3) *If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in*

respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4) *In the like case the person entitled to the annual sum, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by all or any of the means hereinafter mentioned, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed:*

Provided that this subsection shall not authorise the creation of a legal term of years absolute after the commencement of this Act [January 1, 1926], *save where the annual sum is a rentcharge held for a legal estate.*

The surplus, if any, of the money raised, or of the income received, under the trusts of the deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

The means by which such annual sum, arrears, costs and expenses may be raised includes—

(a) *the creation of a legal mortgage or a sale (effected by assignment or subdemise) of the term created in the land charged or any part thereof,*

(b) *the receipt of the income of the land comprised in the term.*

(5) *This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and has effect subject to the terms of that instrument and to the provisions therein contained.*

(6) *The rule of law relating to perpetuities does not apply to any powers or remedies conferred by this section, nor to the same or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section.*

(7) *The powers and remedies conferred by this section apply where the instrument creating the annual sum comes into operation after the thirty-first day of December,* 1881, *and whether the instrument conferring the power under which the annual sum was authorised to be created came into operation before or after that date, unless the instrument creating the power or under which the annual sum is created otherwise directs.*

It will be observed that the remedy of distress arises after twenty-one days' default by the person liable to pay the rent, but that if forty days elapse without payment then the person entitled to the rent may either take possession and receive the income, or may create a term by way of demise of *the land charged* to a trustee on trust to raise the amount of the arrears and all costs and expenses. The trustee may sell or mortgage the term granted to him for the purpose of raising such arrears, costs and expenses, or may simply receive the income of the land. In any event the surplus of the moneys raised by the trustee will belong to the person entitled to the land. This section confers slightly fuller powers than those conferred by section 44 of the Conveyancing Act, 1881, but, in substance, reproduces that section.

Section 6 of the Conveyancing Act, 1911, reproduced in sub-section 6 above, disposed of a doubt which formerly existed, namely, whether powers of entry and distress in a deed creating a rentcharge were void for remoteness under the rule against perpetuities if not limited so as to be exercisable within the lifetime of named or ascertainable individuals and twenty-one years after the death of the last survivor of them. And see L. P. A., 1925, s. 162 (1) (a), (b) and (c).

Sub-section 7 refers to instruments coming into force after December 31, 1881, because the Conveyancing Act, 1881, came into force immediately after that date, *i.e.*, on January 1, 1882. It may occasionally happen that the power to create a term will be useful. For example, the freehold land out of which the rent issues may be subject to a lease already granted to an occupying leaseholder at the time when the rentcharge is created. In that case the leasehold interest takes precedence over the rentcharge and the statute then provides a solution, for the lease created by the rentcharge owner takes effect as if made by the owner of the land, *i.e.*, as a concurrent lease which is notionally carved out of the freehold reversion so as to put the termor in the place of the freeholder, and thus enable him to collect the rent from the occupying leaseholder.

The rights conferred by the Conveyancing Act, 1881, were in addition to and not in substitution for other remedies such as the right to sue for the recovery of the arrears due: *Searle* v. *Cooke*,

43 Ch. D. 519; and see *Hambro* v. *Hambro*, [1894] 2 Ch. 564, and *Re Tucker*, [1893] 2 Ch. 323. The same observation no doubt holds good as to the rights conferred by the above section. Rentcharges in possession, whether perpetual or for a term of years absolute, created otherwise than by will or voluntary settlement (S. L. A., s. 1 (1) (v); *Re Austin*, [1929] 2 Ch. 155), may be legal interests (L. P. A., s. 1 (2) (b)), and do not require registration as land charges.

Although a covenant to pay the rentcharge is commonly inserted in the deed creating it, it is unnecessary, as the freeholder in possession is liable to pay it even in the absence of such covenant: *Thomas* v. *Sylvester* (1873), L. R. 8 Q. B. 368; *Ex p. Graham* (1889), 42 Ch. D. 343 and *Searle* v. *Cooke*, *supra*.

It was held prior to 1926 that the liability on the covenant to pay a rentcharge extended to a mortgagee even though he has never taken possession (*Cundiff* v. *Fitzsimmons*, [1911] 1 K. B. 513), where the mortgage was by conveyance of freehold subject to the rentcharge; and it was considered desirable to adopt the device of taking the mortgage by way of demise in such cases, as a leaseholder is not so liable: *Re Herbage Rents*, [1896] 2 Ch. 811. Since the L. P. A., 1925, however, the point is not likely to arise, as all legal mortgages must be by way of legal charge or the grant of a term of years. In the recent case of *Grant* v. *Edmondson*, [1931] 1 Ch. 143, it has been held that the benefit of the original covenant for payment of a rentcharge does not run with the rent. In other words, if A owning a freehold property grants a rentcharge in perpetuity upon it in B's favour and covenants with B, his executors, administrators *and assigns* for himself, his executors, administrators and assigns, then A's executors having sold the land are not liable upon the covenant to the persons claiming as B's successors in title to the rentcharge. As we have seen, however, the actual freeholder in possession from time to time *may* be sued for the rent.

As to rentcharges charged on other rentcharges see L. P. A., 1925, s. 122.

Sale of freehold subject to a perpetual rentcharge (*Condition* 12 (2)).

In this case, as the abstract of title will show title to the land sold, the point taken above in connection with the title to be deduced on the sale of rentcharges does not arise, and as to Condition 2 (a), this does not in any way abridge the right of the purchaser to call for a full thirty years' title to the land.

As Condition 12 (2) (b) requires the purchaser conclusively to assume, on production of the receipt for the last payment due, that the covenants and provisions in the document creating the rent-

charge have been performed and observed, the purchaser should inquire before exchange of contracts whether the covenants have in fact been complied with.

As to conditions making receipts for rent conclusive evidence of compliance with covenants, see *Beyfus* v. *Lodge*, *supra*, p. 308, and further observations on this point will be made when dealing with Condition 14 (as to leaseholds). As perpetual rentcharges are more or less confined to certain parts of the country it may be desirable to point out that quite apart from the usual covenants in the deed by which the rentcharge is created as to maintaining buildings on the land in order to preserve the security for the rentcharge, it is by no means uncommon to find covenants restrictive of the user of the land, and it is therefore important to peruse such deed carefully, and to advise the intending purchaser of any covenants which it contains. As will be seen from the observations below, the redemption of the rentcharge under the statutory power mentioned below will not necessarily discharge the covenants.

Condition 12 (2) (c), which requires the purchaser to accept as sufficient such evidence of the title of the person giving the receipt for the last payment as is available to the vendor, his trustee or mortgagee, is clearly reasonable, since the owner of the burdened land will have no abstract of the title to the rentcharge.

Condition 12 (3) emphasises the desirability of inspecting the original deeds before exchange of contracts where copies or abstracts of those deeds are supplied and the accuracy or completeness of such copies or abstracts is not warranted.

Section 190 of the L. P. A., 1925, deals with the effect of conveyances where part of the land subject to a rentcharge is sold without the consent of the owner of the rentcharge. The land may be sold charged with the whole of the rentcharge, or the rent may be charged exclusively on the land retained by the vendor, or the rentcharge may be apportioned between the land conveyed and the land retained by the vendor. The section gives the right of distress and perception of rents by way of reimbursement to either of the parties who (a) pays any sum on account of the rentcharge, or (b) incurs any costs, damages or expenses by reason of any default by the other party.

The methods by which rents (other than rents reserved by a lease) and rentcharges can be redeemed are set out in section 191 of the L. P. A., 1925, which provides as follows:—

Section 191.—(1) *Where there is a rent being either*—

(a) *a quit rent, chief rent or other annual or periodical sum issuing out of land; or*

(b) *a rent reserved on a sale, or made payable under a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes; or*

(c) *a compensation rentcharge created as the consideration for the extinguishment of manorial incidents;*

the Minister shall at any time, on the requisition of the owner of the land or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

Where the rent is not perpetual, the Minister may authorise the purchase of a Government annuity of an amount equal to the rent, payable during the residue of the period for which the rent would have been payable, in such names as he may think fit, and give directions as to the payment of the annuity, and the amount required to purchase that annuity shall be the redemption money.

(2) *Where the rent is perpetual and was reserved on a sale, or was made payable under a grant or licence for building purposes, the redemption money shall be such sum as would (according to the average price, at the date of redemption, of such Government securities as may for the time being be prescribed by the Treasury) purchase sufficient of such Government securities to yield annual dividends equal to the amount of the yearly rent redeemed.*

(3) *Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Minister.*

(4) *If the Minister is satisfied—*

(a) *that any person who has been in receipt of a rent, or claims to be entitled thereto, is unable or unwilling to prove his title either to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, or neglects to apply to any competent body or person for any requisite order or consent; or*

(b) *that a person entitled to the rent or any part thereof cannot be found or ascertained; or*

(c) *that by reason of complications in the title to the rent, or the want of two or more trustees, or for any other reason a tender of the redemption money cannot be effected, or cannot be effected without incurring or involving unreasonable cost or delay;*

the Minister may authorise the owner or other person interested in the land affected by the rent to pay the amount of the redemption

money certified by the Minister or the Government annuity into court, to an account entitled in the matter of the rent and of the land affected.

(5) *On proof to the Minister that such payment (whether into court or otherwise) or tender has been made, he shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive and the land shall be thereby absolutely freed and discharged from the rent.*

(6) *Any person claiming to be interested in the annuity or fund in court, or who would have been interested in the rent had it not been redeemed, may apply to the court for an order giving directions for the payment of the annuity or of the fund in court or any part thereof, or of the income thereof to the persons entitled to give a receipt therefor, and it shall not be necessary to serve the owner of the land or the Minister with notice of the proceedings.*

(7) *Where any person interested in the whole or any part of the land affected by the rent desires to effect a discharge of a part of the land, and the remainder of the land is not exonerated or indemnified from the rent by means of a charge on the aforesaid part, the Minister may, on his application, by a certificate, apportion the rent between the aforesaid part of the land and the remainder of the land affected (regard being had to the security which will be left for the payment of any part of the rent and to any apportionment which is not binding on the owner of the rent), and any apportioned part of the rent shall be redeemable under this section, and, on such redemption, the part of the land to which the redemption applies shall be discharged from the entire rent.*

(8) *Every requisition under this section shall be in writing; and every certificate under this section may be in writing, sealed with the seal of the Minister.*

(9) *Rules may be made by the Minister for regulating proceedings to be taken under this section, and as to the manner in which costs are to be borne by the respective parties.*

(10) *All decisions of the Minister made under this section shall (subject only to such appeal to the court as may be prescribed by rules of court) be final.*

(11) *This section applies whether or not the rent is settled or is held on trust for sale, or on trust for charitable, ecclesiastical, public or other purposes, or is subject to incumbrances, and whether the rent was created before or after the commencement of this Act.*

(12) *This section does not apply to tithe rentcharge or a charge or other payment redeemable under the Tithe Acts, 1836 to 1918, or to a rent reserved by a lease or tenancy.*

Rather similar provisions were contained in the Conveyancing Act, 1881; but a rent reserved on a sale could not be redeemed under that Act. It will be seen that although such a rent can now be redeemed, this does not apply to a case where on a sale, a lease at a ground rent has been granted to a purchaser; for the section does not apply to any rent reserved by a lease (section 191 (12)).

Another important point is that there is nothing in the section which discharges the land from restrictive covenants imposed by the deed creating the rentcharge. Thus A, owning Blackacre and Whiteacre, may sell to B Whiteacre in consideration of a perpetual rentcharge issuing out of Whiteacre. For the benefit of Blackacre A may impose restrictions as to the user of Whiteacre. If X buys Whiteacre from B with the intention of using it for purposes prohibited by the restrictions, it would seem that the compulsory redemption of the rentcharge will afford no solution of the difficulty.

It will be noted that section 191 (7) only enables the Minister to apportion the rent between a part of the land and the remainder of the land affected by the rentcharge if the remainder of the land is not exonerated or indemnified from the rentcharge by means of a charge on the part which it is desired to discharge. Thus if A sells a part of his land to B on the basis that the part retained is to be charged with the whole rentcharge it is clear that so far as A is concerned there can be no occasion for an apportionment. It is, however, conceivable that B may desire to obtain a legal apportionment in order to determine and define his maximum legal liability vis-à-vis the rentcharge owner, particularly if the rentcharge is substantial. Any informal apportionment is not, of course, binding upon the Minister but regard must be had to any such apportionment, and to the security which will be left for the payment of any part of the rent (section 191 (7)). As the rentcharge owner may collect the rent by the exercise of his right of distress or other remedies set out above in respect of any part of the land subject to the rentcharge, an apportionment may be desirable in order to facilitate a sale or mortgage of property burdened in this manner, particularly if it is considered that the informal apportionment is reasonable and likely to be confirmed by the Minister.

RESTRICTIVE COVENANTS AFFECTING REGISTERED LAND (FREEHOLD).

By R. Graham Page, LL.B., Solicitor.

Although the general law relating to restrictive covenants is the same for registered as for unregistered land, the difference in practice has led to some difficulty for practitioners not familiar with the newer method of conveyancing. An attempt is here made to co-ordinate the rules and practice.

First, then, reference must be made to section 40 of the Land Registration Act, 1925, sub-section 1 of which gives the power to impose restrictive covenants upon registered land :—

> " Subject to any entry to the contrary on the register, and without prejudice to the rights of persons entitled to overriding interests (if any) and to any incumbrances entered on the register, who may not concur therein, the proprietor may in any registered disposition or other instrument by covenant, condition or otherwise, impose or make binding, so far as the law permits, any obligation or reservation with respect to the building on or other user of the registered land or any part thereof, or with respect to mines and minerals (whether registered separately or as part of the registered land) or with respect to any other thing in like manner as if the proprietor were entitled to the registered land for his own benefit."

Section 50 (1) provides the necessary protection for covenants which have been imposed :—

> " Any person entitled to the benefit of a restrictive covenant or agreement (not being a covenant or agreement made between a lessor and lessee) with respect to the building on or other user of registered land may apply to the Registrar to enter notice thereof on the register and where practicable the notice shall be by reference to the instrument, if any, which contains the covenant or agreement, and a copy or abstract of such instrument shall be filed at the registry; and where any such covenant or agreement appears to exist at the time of first registration, notice thereof shall be entered on the register. In the case of registered land the notice aforesaid shall take the place of registration as a land charge."

Protection by Notice.

Accordingly, the benefit of a restrictive covenant is protected by a notice against the servient property and it is necessary to appreciate the position which a "notice on the register" holds in the system of Land Registration. Whereas an estate owner of land, a mortgagee or a chargee is given special protection by the issue to him of a certificate, the owner of a subsidiary interest (*i.e.*, something less than the freehold or leasehold estate in the land) is protected only by means of entries on the register or, in certain cases, only by virtue of the provisions of the Act and without any entry whatever. The provisions for protection without entry relate to what are termed in the Act "overriding interests", which include such matters as easements, leases under twenty-one years, rights of persons in occupation, liabilities to repair highways, land tax and tithe redemption annuity, etc. But all other subsidiary interests must be protected in one of four ways, namely (1) by the entry (with the concurrence of the estate owner) of a restriction on dealings with land, so, as, for example, to protect a settlement under the Settled Land Act or by way of trust for sale—and it may be noted here that the registration of a restriction has nothing whatever to do with the protection of restrictive covenants as to user (*a*); (2) by the registration of a caution against dealings with the land, which may be used generally for the protection of minor interests without the concurrence of the estate owner; (3) by the registration of an inhibition when none of the other specified methods of protection seem applicable to the applicant's particular interest; and (4) by the registration of a notice.

The normal method of protection for restrictive covenants is that of notice prescribed by section 50 of the Act.

To return, therefore, to the wording of section 50 we must consider the words "*The person entitled*". The "*person entitled to the benefit* of a restrictive covenant or agreement" will, in ordinary cases, be a vendor who will also be, at the time of imposing the restrictive covenant, the registered proprietor of the land. The common case of the imposition of a restrictive covenant is when such imposition occurs on the sale of land forming part of, say, a residential estate, the vendor desiring to preserve the amenities of other property belonging to him in the neighbourhood

(*a*) These minor interests will be overridden by a disposition of the legal estate. *Dispositions* of such minor interests may require entries in the Minor Interests Register which does not affect the legal estate.

by preventing the unseemly user of the property sold. Such a case is envisaged in Rule 135 :—

> " A transfer of land imposing restrictive covenants under section 40 of the Act shall be made by an instrument in Form 43, and a certified copy thereof shall be lodged therewith."

Form 43 assumes the imposition of restrictive covenants upon the transfer of part of the land contained under one title number and directs the addition at the end of the ordinary form of transfer of the words : " And C D hereby covenants with A B for the benefit of the remainder of the land comprised in the above title number as follows, namely "—and here should be set out the restrictive covenants, " so framed as to be clear and intelligible when placed in the register of the land transferred, without reference to any document or matter of law or fact which does not appear thereon ".

As soon as the transfer (including the covenants) effectuating the sale is registered, the Vendor ceases to be the registered proprietor and becomes only " the person entitled ". Furthermore, if the imposition of the restrictive covenants occurs other than upon a transfer, the registered proprietor of the land subject to the burden and " the person entitled " are never the same person; in fact, they are the two opposite parties, namely, the covenantor and the covenantee respectively. This proposition must be self-evident, and the draftsman of section 40 must have had those facts in mind when he referred in the fourth line to " the proprietor " and in the concluding phrase gave to that person powers " in like manner as if [he] were entitled to the registered land for his own benefit ".

Unfortunately, the interpretation clause (section 3 of the Act) defines the " proprietor " to be : " (xx) . . . the registered proprietor for the time being of an estate in land or of a charge."

Applying this interpretation it is difficult to understand whether the draftsman is speaking of the proprietor of the registered land adversely affected by the restrictive covenant or of the proprietor of the land for the benefit of which the restrictive covenant has been imposed.

The solution seems to be that the draftsman, when he commenced to draft the section, had in mind the case of restrictive covenants imposed upon the occasion of a sale and upon the registered land sold. At the time of the transfer effectuating the sale, the vendor would be the registered proprietor. This is the person to whom he refers when he first mentions the proprietor. But when the transfer is registered, the purchaser becomes the registered proprietor and becomes entitled to the registered land

for his own benefit. In the draftsman's mind, this process evidently took place while he was writing the section, so that by the time he reached the end of the first sub-section his original "proprietor" had ceased to be the registered proprietor and therefore had to be presented with the concluding assumption.

However, that problem appears to be academical and for practical purposes one may classify "the person entitled" as either (i) the vendor of the land, that is to say, the person who is registered as the proprietor at the time of the transfer of the land to be made the servient land, or (ii) some other person entirely, that is to say, some person (not being at that time the registered proprietor of the servient land) who has taken a covenant from the person who is registered as the proprietor of the servient land. Persons coming under (ii) may be sub-divided into those who are registered proprietors of land for the benefit of which the covenant is given, and those who are not *registered* proprietors, that is to say, who are estate owners of unregistered land or persons not owning land at all (*b*).

Both (i) and (ii) are the original covenantees, but persons deriving title from the original covenantees may also be persons entitled to the benefit of the covenants and therefore one may add to the two divisions already mentioned, a third division, namely, the following: (iii) The original covenantee's assignees to whom has been assigned the benefit of the restrictive covenant in question either (a) by proper assignment of a chose in action in accordance with section 136 of the Law of Property Act, 1925, or (b) by mere purchase of the land for the benefit of which the covenant was given, provided that in the case of (b) the covenant was a restrictive covenant proper, that is to say, one which can run with the land in accordance with the rule in *Tulk* v. *Moxhay* (2 Ph. 774) and to whom the benefit has passed: see *Re Union of London and Smith's Bank*, [1933] Ch. 611; *Re Ecclesiastical Commissioners*, [1936] Ch. 460. Under (iii) (b) are included those persons who are entitled to the benefit of restrictive covenants imposed under a building scheme as described by Parker, J., in *Elliston* v. *Reacher*, [1908] 2 Ch. 384, and as mentioned more fully hereafter.

What is a Restrictive Covenant.

These last remarks lead one back to the consideration of the wording of section 50—"Any person entitled to the benefit of *a restrictive covenant or agreement*". It is not proposed to discuss

(*b*) The last case is not properly a restrictive covenant and it may be that it cannot be entered, but the wording appears to be wide enough to cover it.

here the essentials of a restrictive covenant. Suffice it to say that any covenant or agreement which comes within the familiar rule in *Tulk* v. *Moxhay* and the subsequent cases which set out the fundamentals of a covenant having the attribute of running with the land, is a covenant or agreement capable of creation under section 40 and protection under section 50.

To pass over the words in parenthesis for the moment, the section continues with a brief description of those covenants or agreements by referring to them as those "*with respect to the building on or other user of registered land*". The description is wide enough to include not only all covenants and agreements properly known as "restrictive" or "negative" and which accordingly run with the land, but also those "personal" and "positive" covenants and agreements which do not run with the land.

Section 50 therefore goes, in its provision, beyond the scope indicated by its marginal note which reads: "Notices of Restrictive Covenants" and provides for the protection, by notice, of even those covenants relating to user which are not "restrictive covenants" properly so called. The section, however, does not endow personal or positive covenants as to user with the attributes of proper restrictive covenants, as section 52 (2) clearly shows:—

> "Where notice of a claim is entered on the register, such entry shall operate by way of notice only, and shall not operate to render the claim valid whether made adversely to or for the benefit of the registered land or charge."

However, despite the wide description of a covenant or agreement, it is to be noted that the section, by the words in parenthesis —"*not being a covenant or agreement made between a lessor and lessee*"—excludes covenants or agreements contained in leases or tenancy agreements from the operation of the section. The reason for this is that leases for any term or interest not exceeding twenty-one years, granted at a rent without taking a fine, are overriding interests (section 70 (1) (k)), and where the term granted by the lease or tenancy agreement is not an overriding interest it may be protected by notice for which provision is made in section 48. There is, accordingly, no need to make further provision therefor in section 50.

Where, however, a building estate is developed by way of leases instead of grants of freehold it would appear that restrictive covenants are enforceable by lessees against other lessees: *Holloway Bros.* v. *Hill*, [1902] 2 Ch. 612. In the event of the building scheme being registered against the freehold a notice of the restrictive covenants should appear on the register of each leasehold

title (*c*). Similarly if the scheme is effected by grants of sub-lease the restrictions should be entered against the said lease and then entered on all the titles to the sub-leases. No provision for this seems to have been contemplated, as the Act follows the wording of the Land Charges Act, but it is submitted that these covenants are not strictly covenants between lessor and lessee although they may be contained in the lease (*d*).

Entry of Notice.

The provision of section 50 that "any person entitled . . . *may apply to the registrar to enter notice thereof on the register*", is further carried out by section 40 (3) which enacts that "*entries shall be made on the register in the prescribed manner of all obligations and reservations imposed by the proprietor*". The entry of a notice under section 50 is "the prescribed manner" mentioned in section 40 (3). It would seem that the application itself is not part of "the prescribed manner" and that, accordingly, entry of the notice of the covenants should be made by the Registrar whether express application is made by the parties or not. It is the practice of the Registry to note, without express application, the following: (i) Restrictive covenants imposed by the instrument of transfer upon the land transferred thereby, and (ii) restrictive covenants imposed upon land retained, forming, at the date of the transfer, part of the same title number as the land transferred. In all other cases express application should be made.

The application to the Registrar should be embodied in the instrument imposing the restrictive covenants by such words as the following:—

> "And we, the said A B and C D hereby apply to the Registrar to enter notice of the foregoing covenants in the register under the title number above referred to." (See Form 43.)

If such a clause has not been included in the instrument imposing the covenants, then a form in similar wording, but referring to the instrument, should be typed out addressed to the Registrar and signed by the applicant or his solicitor.

If the application is in order, rule 212 provides that "restrictive covenants created under section 40, or noted against a title under section 50 of the Act, shall be entered in the Charges Register,

---

(*c*) See *post*, p. 340, for consideration of the entry of a notice of the benefit of the covenant.

(*d*) For the practice relating to building estates, see Practice Pamphlet No. 7 issued by the Registry, and for forms of transfer, see Potter, Registered Land Conveyancing, pp. 360—363.

in the method directed by section 50." There is no real distinction between those "created under section 40" and those "noted against a title under section 50", for section 40 directs that entries of obligations created thereunder shall be made in the prescribed manner and the prescribed manner is by way of notice under section 50. "The method directed by section 50" is, of course, the entry of a notice.

As regards the documents to accompany the application to enter a notice, "so long as a land certificate or charge certificate is outstanding, it shall be produced to the registrar . . . (c) in every case . . . where under this Act or otherwise notice of any estate right or claim or a restriction is entered or placed on the register, adversely affecting the title of the proprietor of the registered land or charge . . ." (section 64 (1)). If the covenant is imposed on the occasion of a transfer of the registered land and the covenant is inserted in the form of transfer in accordance with Form 43, then the Land Certificate will necessarily be lodged for the purpose of the transfer and the covenantee may rest assured that he will be protected by the automatic entry of the necessary notice. If the restrictive covenant is taken upon any other occasion, as by separate deed of covenant, the covenantee should take an undertaking from the person in whose possession the certificate is, that the certificate will be lodged forthwith and that he (the covenantee) will be informed of the deposit number (*i.e.* the Land Registry's reference number) under which it has been lodged. Then, when forwarding his application for entry of the notice, he should refer the Registrar to that deposit number.

The other documents required to be produced at the Registry are indicated in the following words of section 50: "and where practicable the notice shall be by reference to the instrument, if any, which contains the covenant or agreement, and *a copy or abstract of such instrument shall be filed at the registry*". The proper course is to forward the original document imposing the covenant together with a certified copy of that document—certified because rule 309 states that "every copy of a document delivered by a solicitor at the Registry shall be endorsed with his name and address, and shall be certified by him to be a true copy of the original". The original document will be returned in due course (if it is not also a transfer) bearing a Land Registry memorandum stamped on it, showing that it has been duly registered—a useful addition from the point of view of later reference. This is in the case of restrictive covenants taken by a separate deed or agreement and not included in a transfer. In the case of covenants included in a transfer in accordance with Form 43, a certified copy of the

transfer should accompany the original transfer (*e*). (See the Note appended to Form 43 : "This Form must be accompanied by a certified copy thereof.")

If the restrictive covenant is imposed by a separate document, *i.e.*, not included in a transfer, a fee of 10s. will have to be paid for entry of the notice.

The penultimate sentence of section 50 (1) deals with quite a different state of affairs to that envisaged in the earlier part of the section. The earlier part of the section deals with restrictive covenants imposed upon land already registered. Then follows a provision with regard to land subject to restrictive covenants at the time when application is made for first registration "*and where any such covenant or agreement appears to exist at the time of first registration, notice thereof shall be entered on the register*". No application for entry of the notice is necessary in this case. The Registrar will discover the restrictive covenant when he peruses the deeds and documents of title sent to him with the application for first registration, and he will enter the notice accordingly.

Nor is any application for entry of notice necessary when restrictive covenants are already in existence at the date of a transfer and are noted on the register. There is no necessity even to refer to them in the transfer, although many conveyancers deem it prudent to do so in order that there should be no question that the land is sold subject thereto or with the benefit thereof (*f*) and so that the notice should not be inadvertently removed from the register. If they are in existence at the date of the transfer, but have not been noted in the register against the title to the property transferred, they should properly be referred to in the transfer and what has already been said with regard to applications for entry of notice thereof applies.

Mention should be made of the concluding sentence of section 50 (1) which was inserted to assure the practitioner that having made his application as already described, he need not concern himself with the Land Charges Act, 1925, s. 13 (2) which enacts that restrictive covenants created since 1925 should be registered as a land charge in H.M. Land *Charges* Register. "*In the case of registered land*

(*e*) It is now the practice to copy on to the land certificate of the servient land the restrictive covenants, but the dominant owner should retain a copy of the restrictions which can be conveniently done by means of a duplicate transfer which need not be filed

(*f*) Where there is no building scheme and part only of the land benefiting is to be transferred it would appear to be desirable that the benefit should be expressly transferred : *Re Union of London and Smith's Bank*, [1933] Ch. 611; though it does not necessarily follow that the benefit will not pass : *Drake* v. *Gray*, [1936] Ch. 451; and see *ante*, p. 74. It is thought that the rules are the same for registered as unregistered conveyancing.

the notice aforesaid shall take the place of registration as a land charge."

EFFECT OF ENTRY OF NOTICE.

Having had the notice entered, the practitioner will require to know what effect that entry has. For this he need search little further than his own knowledge of the effect of any covenant and in particular the distinction between the effect of negative restrictive covenants proper on the one hand and personal or positive covenants on the other hand.

To assist him sub-section 2 of section 50 makes the following provision :—

> " When such a notice is entered *the proprietor of the land and the persons deriving title under him* (except incumbrancers or other persons who at the time when the notice is entered may not be bound by the covenant or agreement) *shall be deemed to be affected with notice of the covenant* or agreement as being an incumbrance on the land."

The entry of a notice under section 50 does not confer validity on the covenant itself nor give it any more efficacy than it would otherwise have. The notice is nothing more than notice in any other form might be. A person dealing with any land, whether registered or not, takes that land subject to any restrictive covenants of which he has notice or—and this is where the sub-section is of importance—of which he is deemed to have had notice. If notice of the covenants is entered on the register, any person dealing with the land against which such notice is entered is deemed to have notice of those covenants whether he was, in fact, aware of them or not, and he will receive the land with the burden of those covenants provided they are restrictive covenants properly so called. The sub-section throws upon a transferee not only the responsibility of examining the register to discover whether any such notice is registered, but also the responsibility of investigating the deed or agreement referred to in the notice, so as to discover the actual terms of the covenants, because he is deemed to have full knowledge of those terms.

As has been said, section 50 is not, by its wording, restricted to covenants which run with the land. It would appear from the terms of that section that covenants which do not run with the land may be registered by the entry of a notice. But the only effect of the entry of the notice is to give notice of such covenants to a person dealing with the land. Section 52 (2) has already been quoted and section 52 (1) may usefully be set out here :—

> " A disposition by the proprietor shall take effect subject to

all estates, rights, and claims which are protected by way of notice on the register at the date of the registration or entry of notice of the disposition, *but only if and so far as such estates, rights, and claims may be valid and are not* (independently of this Act) *overridden by the disposition.*"

If the covenant were not a restrictive covenant proper it would be "overridden by the disposition" in all ordinary cases, for a purchaser, for example, is not bound by his predecessor's positive covenants or personal covenants, even though he has notice thereof (*Austerberry* v. *Oldham Corporation*, 29 Ch. D. 750) (*g*). For that reason, the Registrar, as a general practice, refrains from entering notice of positive or personal covenants and excludes from the register covenants which, under the rule in *Tulk* v. *Moxhay*, do not run with the land. The exclusion is made as far as practicable, but it often occurs that positive and negative covenants are so intermingled in one document that it is impracticable to separate them. If such be the case, the whole document will be registered, with a note confining the operation of the entry to such of the covenants as run with the land. This practice carries out the principle of the Act if not the letter of section 50 and it is supported by the following reasoning. The Act empowers the making of Rules; Rule 135 provides a form for the imposition of restrictive covenants; that form as it appears in the Schedule to the Rules has a Note appended thereto, reading as follows: "Only restrictive covenants can be registered." It is true that the Note continues: "Covenants to expend money or to do any work on the land may be added to the transfer", but such covenants are not to be protected by entry of a notice. The Notes appended to the forms are a part of the text of the Rules, and the Rules have the force of the Act and, accordingly, the Note that "only restrictive covenants can be registered" is a statutory enactment.

Section 52 (1) and (2) was not inserted without just cause. Prior to the Act of 1925, the Land Transfer Act, 1875, s. 84, as amended by the First Schedule to the Land Transfer Act, 1897, had provided for the annexation of restrictive covenants to registered land with the intention that the first proprietor and every transferee, and every person deriving title from him, should be deemed to be affected with notice of such covenants—a provision very similar to section 52 of the 1925 Act. Yet in the case of *Willé* v. *St. John*, [1910] 1 Ch. 325, it was argued that the mere

(*g*) This is subject to the possibility that the covenant may be protected by a right of entry. The Act does not appear to have contemplated this case and the position is by no means clear: see Potter, Registered Land Conveyancing, pp. 95, 96.

registration of a restrictive covenant by and against the estate of a common vendor enabled one purchaser to enforce the covenant against another purchaser, even in the absence of proof of a building scheme.

The case illustrates the general effect of annexing restrictive covenants to registered land, under provisions very similar to those at present in force.

The facts were that in 1903 Holmes purchased fourteen acres of the Du Cane Estate and covenanted with his vendors not to erect on the land buildings other than private dwelling-houses. Holmes registered his title, but notice of the covenant was not entered on the register of his title until April 6, 1906, on which date he entered notice of the covenant against the title to the whole fourteen acres and on the same day he transferred one plot to Willé who covenanted to observe the restriction. In 1907 Holmes conveyed the plot adjoining Willé's plot to four joint purchasers, who erected a church thereon. Willé, being it is presumed of a creed different from that of the church-builders, brought action against them, claiming that by virtue of the entry made by Holmes upon the register he was entitled to enforce the restriction against the four purchasers as persons deriving title from the common vendor. In fact, he claimed that the effect of the registration was to create a building scheme and to attach the restrictive covenant to the land so as to make it run with the land.

Cozens-Hardy, M.R., in giving judgment for the church-builders, stated : " The object of section 84 [of the Land Transfer Act, 1875,] was to enable a man who buys land, as to which restrictive covenants have been entered into, to put notice of the conditions, imposed by the covenants, on the register; and ordinarily it is his duty to do so. But the suggestion that section 84 creates a condition merely by putting something on the register is entirely without foundation and goes altogether beyond the scope and object of the section." Then, later, after mentioning the fact of Holmes having entered notice of the covenants, he says : " That was notice that those conditions did affect the land as between Holmes and the Du Cane trustees or persons claiming under them. But to say that the effect of this registration was to constitute a building scheme or to entitle any one purchaser from Holmes to assert against another purchaser or against Holmes that the land ought to be as between them subject to these conditions, is to go beyond anything to be found in the section and is inconsistent with every principle of law. It would be a most serious blot upon the Registration Acts, if, by merely giving notice of conditions of this kind, the landowner were to produce the same consequences

as would have followed in case there had been a building scheme." Fletcher Moulton, L.J., in a concurring judgment, says : " I think it was only intended [by section 84] to make an entry on the register of restrictive covenants as effective in every way as notice of the covenants would have been."

So Willé did not succeed, but the very fact that such a case was fought, even as far as the Court of Appeal, shows on the occasion of a sale of several plots by public auction, it is not unwise to insert a provision preventing the entry of notice of restrictive covenants from being used as evidence that a building scheme has been created. If the plots are being sold subject to similar restrictive covenants, the conditions of sale should provide that each transfer should reserve to the registered proprietor of the part of the estate unsold the right to release or vary any of the restrictive covenants and that nothing in the contract or the transfer will be deemed to create a building scheme.

If, of course, it is desired to create a building scheme, the conditions of sale should so provide in some such terms as the following : " The said restrictive covenants are part of a building scheme applicable to the Blackacre Estate and are to be binding on all Purchasers of Lots hereunder *inter se* and on the Vendor as regards any Lot unsold." The building scheme should then be entered as a whole against the vendor's title and it will then appear on each purchaser's title without any mention of it on the transfer to each purchaser. Some practitioners add to the conditions of sale provisions that the scheme will be so entered against the vendor's title, that such entry shall be deemed sufficient notice (for the purposes of sections 40 and 50) of all conditions imposed by the scheme and that effect shall be given to such provisions in the several transfers. They then follow this up with a clause in each transfer to the effect that the covenants form part of the building scheme of the Blackacre Estate of which a general notice shall be entered against the title of the vendor and shall be deemed a sufficient entry of the said restrictive covenants for the purposes of sections 40 and 50 without specific reference to the instrument of transfer, which is, truly, the instrument creating the covenants.

Effect of Non-entry of Notice.

Apart from loss of the protection of the presumption of notice, a restrictive covenant suffers no loss of validity by not being noted on the register. The original covenantor is bound by his covenant whether it is noted on the register or not. Otherwise it would seem that a transferee is not bound by any interest, other than

an overriding interest, which does not appear on the register: sections 20 (1), 22 (1).

DISCHARGE OF REGISTERED COVENANTS.

Section 50 (3) provides for the cancellation of the entry on the register in the event of the restrictive covenants being discharged, and also for the entry of any modification of the covenants. The discharge or modification may come about either by a licence, release or waiver on the part of the person entitled to the benefit thereof, or by the termination of the effect of the covenants under a provision in the document creating them, or by an order under the Law of Property Act, 1925, s. 84.

Section 40 (2) grants the power to release or waive restrictive covenants which are noted on the register and the power to grant licences with regard thereto. It reads as follows:—

> "*The proprietor* [of the land to which the benefit of the covenant is attached] *may* (subject as aforesaid) *release or waive* any rights arising or which may arise by reason of *any covenant or condition*, or release any obligation or reservation *the benefit of which is annexed or belongs to the registered land*, to the same extent and in the same manner as if the rights in respect of the breach or the benefit of the covenant, condition, obligation, or reservation had been vested in him absolutely for his own benefit.
>
> "This subsection shall authorise the proprietor in reference to the registered land to give any licence, consent or approval which a tenant for life is by the Settled Land Act, 1925, authorised to give in reference to settled land."

Having regard to section 3 (xx), enacting that "proprietor" means "the registered proprietor for the time being of an estate in land or of a charge", one wonders whether, since the Act specifically gives a power of release and waiver to a "proprietor", a person who does not happen to be the owner of any registered land or charge (*i.e.*, who is not a registered owner), can exercise the power of release and waiver of that restrictive covenant.

The words in parenthesis—"subject as aforesaid"—refer to the opening words of section 40 (1), which have already been quoted. The reference to the Settled Land Act, 1925, is to sections 58 and 59 thereof, which give to a tenant for life all the powers of an absolute owner to release or vary restrictive covenants.

Further, with regard to the discharge or modification of restrictive covenants, sub-section 3 of section 40 directs that "entries shall be made on the register in the prescribed manner . . . of the

release or waiver of any obligation or reservation", and this is supplemented by section 50 (3):

> "Where the covenant or agreement is discharged or modified by an order under the Law of Property Act, 1925, *or otherwise*, or the Court refuses to grant an injunction for enforcing the same, the entry shall either be cancelled or reference made to the order or other instrument and a copy of the order, judgment or instrument shall be filed at the Registry."

The words "or otherwise" are apt to be lost amongst the specific mention of the Law of Property Act and orders of Court. The sub-section applies to all three modes of discharge or modification mentioned above, namely, (1) by the person entitled, (2) by lapse of time, and (3) by order of a Court or other tribunal.

To deal with these three modes in greater detail:—

(1) The practice upon an application to remove a notice of restrictive covenants is similar to that upon the entry of the notice. An application contained in or accompanied by the original instrument of discharge and a certified copy will have the required effect (*h*). A similar procedure may be adopted upon a modification of the covenants or a licence to contravene the covenants.

(2) If many years have elapsed since the creation of the covenants, it may be very difficult to discover the persons entitled to consent to the removal of the entry from the register and an order of the Court may be necessary if the Registrar declines, on the grounds of insufficient evidence of discharge, to remove them. A provision, therefore, in the instrument imposing the covenants to the effect that the entry may be removed from the register after the lapse of so many years, may avoid a great deal of trouble and expense. An application to the Registrar to remove them after the lapse of that period is probably necessary, but the application will be granted without the concurrence of the person entitled (or, rather, previously entitled) to the benefit of the covenants (*i*).

In this connection rule 16 is of importance. It provides as follows:—

> "*The Registrar may*, at any time, after such inquiry and notices, if any, as he may consider proper, and upon the production of such evidence as is required by these rules, or as he may deem necessary, *withdraw* from the register by cancellation or otherwise *any* . . . note, *notice*, or other entry, *which he is satisfied has determined*, or ceased, or been discharged, or for any other reason no longer affects or relates to registered land."

(*h*) For form of application, see Potter, Registered Land Conveyancing, p. 417.
(*i*) See also *Re Sunnyfield*, [1932] 1 Ch. 79.

This rule undoubtedly applies to modes (1) and (2), but to what extent it applies to (3) is not easy to ascertain.

(3) It will be remembered that section 84 of the Law of Property Act, 1925, provides that "the Authority" shall have power to discharge or modify any restrictive covenant.

But the powers of the Authority are without prejudice to any concurrent jurisdiction of the Court (*k*). Further, sub-section 8 of section 84 enacts that—

> "This section [section 84] applies whether the land affected by the restrictions is registered or not, but, in the case of registered land, the Land Registrar shall give effect on the register to any order under this section when made."

It would appear, therefore, that if an authoritative order is required for the discharge or modification of restrictive covenants upon registered land, there is a choice of three tribunals, namely (a) the Court (*l*), (b) "the Authority", and (c) the Registrar.

The effect of rule 16 would appear to be that the Registrar may appoint himself a Court of first instance to consider either the original validity of the covenants, the validity of any subsequent agreement for discharge or modification thereof, and the validity of a claim to obsoleteness by reason of change of character of neighbourhood or otherwise. A dissatisfied party has a further chance—a "right of appeal"—to the Court or to "the Authority" whichever he may consider to be the appropriate tribunal for the facts of his particular case.

ENTRY OF NOTICE OF THE BENEFIT.

The fourth sub-section of section 50 is the connecting link between the consideration of the entry of notice of restrictive covenants against the land adversely affected and the noting of those covenants on the register of the land for the benefit of which the covenants were imposed. It states that:

> "The notice shall, when practicable, refer to the land, whether registered or not, for the benefit of which the restriction [*i.e.*, restrictive covenant or agreement] was made."

Form 43 recognises the legal principle that in order to make covenants run with the land it should be stated in the instrument imposing restrictive covenants the land for the benefit of which the covenants are imposed. If this practice is followed in the imposition of restrictive covenants upon registered land, the Registrar will refer thereto in the entry of the notice.

(*k*) See now *Feilden* v. *Byrne*, [1926] Ch. 620; *Re Spencer's Flats*, [1937] 1 Ch. 86.

(*l*) If the matter comes before the Court and the covenant is held unenforceable, it will order its removal from the register: *Re Sunnyfield* (*supra*).

This leads us on to consider the entry of notice of the benefit of a restrictive covenant on the register of the land for the benefit of which the covenant was imposed. To refer again to section 40 (3): "Entries shall be made on the register in the prescribed manner . . . of all obligations and reservations acquired by [the proprietor] for the benefit of the registered estate." What, then, is "the prescribed manner" in this case?

Rule 3 states that "the Property Register shall contain . . . (2) Such notes as have to be entered relating . . . (c) to easements, rights, privileges, conditions and covenants for the benefit of the land, and other like matters." So, whereas the burden of restrictive covenants is noted in the Charges Register, it is in the Property Register that notice of the benefit of restrictive covenants is entered. Rule 3 (2) (c) is carried out in greater detail in rules 251 to 257, of which the following parts are relevant to restrictive covenants:—

> "251. The registration of a person as proprietor of land shall vest in him, together with the land, all rights, privileges and appurtenances appertaining or reputed to appertain to the land. . . .
>
> "252. (1) Where the proprietor wishes (whether on first registration or at any other time) to have a specific entry on the register of any appurtenant right, capable of subsisting as a legal estate, to which he may be entitled, he may apply to the Registrar in writing, signed by himself or his solicitor, for such entry to be made.
>
> "(2) The application shall state the nature of the right and shall furnish evidence of its existence."

The application may be in one of two forms, viz.:—

(i) By separate letter or form to the effect that "A B applies to the Registrar to enter a note of the benefit of the restrictive covenants created by the accompanying deed dated, etc., and made between, etc., as appurtenant to the land comprised in the title above referred to", *i.e.*, the title number of the land for the benefit of which the restrictive covenants have been imposed. The Land Certificate, the original instrument referred to in the application and a certified copy thereof should be sent with the application. It may be that the covenants have been imposed upon the occasion of a sale for the benefit of registered land retained by the vendor. The vendor will not then be able to send the original instrument imposing them, but he should send his Land Certificate and a certified copy of the instrument, together with a reference to the deposit number under which the transfer has been lodged—which number he can, of course, obtain from his purchaser. If the covenants have been imposed upon land of the vendor for the

benefit of land purchased, then the matter is simple because all the necessary documents will be lodged in the ordinary course of registering the transfer. It is as well, however, to make a specific application to the Registrar to enter a note of the benefit of the covenants.

(ii) The other form in which the application may be made is by the addition of some such words as the following to the instrument creating the covenants : " And the said A B hereby applies to the Registrar to enter a note of the said restrictive covenants as appurtenant to . . ." This form is particularly appropriate if the restrictive covenants are imposed upon the occasion of a sale, are included in the transfer, and are imposed for the benefit of the land transferred, that is to say, upon land retained by the Vendor. One can then complete the words quoted above with the words " the land hereby transferred ". It is again appropriate if the restrictive covenants are imposed upon the occasion of a sale of part of the land contained in one title, are included in the transfer and are imposed for the benefit of the land retained by the vendor. One can then complete the words quoted with the words " the land comprised in the title above referred to other than the land hereby transferred ".

As regards the documents to be sent when application is in the form indicated in (2), the same remarks apply as mentioned under (1). In some way or another, the Registrar should have before him the Land Certificate relating to the title under which the note is to be registered, the original instrument imposing the covenants and a certified copy thereof.

To return to the detailed rules relating to entry of notice of the benefit—

> " 253. (1) The Registrar shall [upon receipt of the application] give such notice (if any) to the person in possession of the land affected as he may deem advisable.
>
> " (2) If the land affected is registered he shall give notice to the proprietor and to every person appearing by the register to be interested, and shall, if he thinks fit [even without any application therefor] enter notice of it against such land.
>
> " 254. (1) If the Registrar is satisfied that the right is capable of subsisting as a legal estate and appurtenant to the land, he may enter it as part of the description of the land in the Property Register, and the effect of such entry shall be to confer an absolute, good leasehold, qualified or possessory title to the right, according to the nature of the title to the land.
>
> " (2) If the Registrar is not satisfied that the right is

appurtenant, he shall enter it with such qualification as he may deem advisable, or he may merely enter notice of the fact that the proprietor claims it.

"255. The entry shall be made as far as practicable by reference to the instrument (if any) creating the right, or by setting out an extract therefrom.

"256. On any registered disposition of the land or of a charge thereon, the benefit of the entry shall, on registration, but without prejudice to any express exception or reservation, accrue to the grantee as part of the registered estate.

"257. The benefit of an easement, right or privilege shall not be entered on the register except as appurtenant to a registered estate, and then only if capable of subsisting as a legal estate."

Conclusion.

This completes a general survey of the provisions applicable to restrictive covenants affecting registered freehold land. But it should be added that Land Registry practice is nothing more than supplemental to the general rules of law. It is no more than a system of applying publication of ownership to the fundamentals of private deed conveyancing. In order to carry through transactions relating to registered land with confidence and exactitude the practitioner must be ready to apply general legal principles to the provisions of the Act. At the same time, the Act and the Rules are so extensive and detailed that an application of those general legal principles is impossible without a fair acquaintance of the wording of the relevant provisions.

LAND REGISTRATION: THE PROBLEM OF LEASES.

By F. R. R. Burford, of the Inner Temple,
Barrister-at-Law.

These are the days of speed, and few lawyers have either the time or the inclination to worry over academic problems. But the subject of leases of registered land is of vital importance to the practising lawyer. First, because the granting of long leases is becoming more and more common, especially in the compulsory areas. Secondly, the law on the subject, which many regard as quite simple, is in reality most difficult and full of pitfalls. Thirdly, the subject exemplifies the need for practising lawyers to master the principles of the law dealing with registered land, and not be content to rely on the assistance of kindly officials.

The reply might well be made that such advice is easier to give than to follow. It is indeed difficult to discover the law in regard to registration of leases. Some time elapsed after the coming into operation of the Land Registration Act, 1925 (for convenience called "the Act" in this article), before it was realised how intricate the problem was. Few really claimed to understand the law on the subject, and there were many confused and contradictory ideas. But a rough solution came to be reached which was on these lines :—

Leases of registered land (which term was generally left vague and undefined) could be divided into three classes. Those of forty years or more *must* be registered; those of over twenty-one years but less than forty *might* be registered; those of twenty-one years or less could not be registered. Many conveyancers, otherwise learned, still incline to adopt this tempting solution. To quote from a short article on the subject in *The Conveyancer* for August, 1935 (p. 18): "If any learned conveyancer doubts this" [*i.e.*, the wide extent of this erroneous notion] "let him ask a few friends slightly less learned than himself for their ideas on the subject, and before long he will be inclined to say with Puck: 'Lord, what fools these mortals be!'".

The awakening to the bitter truth was gradual. It is true that there is a note on pp. 1044-5 of the third volume of the 22nd edition of *Prideaux's Precedents*, but it is to be feared that the

contents of that note were not fully realised. The first real shock of surprise came with the appearance of two articles in vol. 72 (1928) of the *Solicitors' Journal*, which were reputed to have been written by a great legal authority. The essential point appeared in the middle of the second article. On p. 181 of vol. 72 there are these two startling sentences.

"The point may be emphasised that what has to be registered is the title to leases exceeding twenty-one years (and not merely forty years or upwards) of registered land. Section 123, requiring the title to a lease having forty years and upwards to run to be registered, applies only to unregistered land in areas in which an Order in Council has been made introducing compulsory registration on a sale or grant of a lease."

This was indeed a bolt from the blue. But it helped to explain the intricate reasoning of the former article, which appeared on p. 96 of vol. 72. Those who wish to understand all the complexities of the subject should certainly study these two articles in vol. 72 of the *Solicitors' Journal* critically and at their leisure. Here we must be content to quote two short passages from the first article.

"The transfer (including a lease, ss. 18 (5), 21 (5)) of the registered estate in the land or part thereof is to be completed by the registrar entering on the register the transferee as proprietor of the estate transferred: L. R. A. 1925 s. 19 (1). Until such entry is made the transferor is deemed to remain proprietor of the registered estate: *ib.* The expression 'transferee' includes a lessee—ss. 18 (5) 21 (5)."

And a little later:

"A 'transfer' of registered freehold land includes any disposition authorised by s. 18 (1) *supra*." Earlier the writer had drawn attention to section 18 (1) of the Act, which gives the dispositions a registered freehold proprietor may make in the prescribed manner, including the grant of a lease of the registered land. He continues: "Thus it includes a lease (for more than twenty-one years) of the registered land or any part thereof; and a 'transferee' has a corresponding meaning: s. 18 (5); cf. s. 21 (1), (5) as regards registered leasehold land."

At this point we may pause to note several matters. In the first place, a great deal of this law is new. Section 29 of the Land Transfer Act, 1875, has been to some extent reproduced by sections 18 and 19 of the Act, but with very material extensions. Section 19 (1) has been referred to *supra*. Section 19 (2) is a very important sub-section, of which we will quote the material parts.

"All interests transferred or created by dispositions by the

proprietor, other than a transfer of the registered estate in the land, or part thereof, shall . . . be completed by registration in the same manner and with the same effect as provided by this Act with respect to transfers of registered estates and notice thereof shall also be noted on the register :

"Provided that nothing in this subsection—

(a) shall authorise the registration of a lease granted for a term not exceeding twenty-one years, or require the entry of a notice of such a lease if it is granted at a rent without taking a fine; . . .

"Every such disposition shall, when registered, take effect as a registered disposition."

Dealing with the proviso first, we may point out that such excepted leases are "overriding interests"—see section 70 of the Act.

We find that section 18 (1) gives a list of possible "dispositions" by a registered proprietor. (These include a lease : section 18 (1) (e).) Section 19 (1) requires entry on the register of "transfers", and section 19 (2) directs that all interests transferred or created by "dispositions" other than "transfers" shall be registered in the same way as "transfers". Following the advice given on p. 170 of *Brickdale's Land Registration Act, 1925* (3rd ed., 1927) and regarding "dispositions" as comprising only those specified in section 18 (1) (see section 18 (5) as to the meaning of "dispositions"), we must conclude that leases of "registered land" (provided that they are for more than twenty-one years) must be registered as separate entities, in accordance with sections 19 (1) and 19 (2) of the Act. Section 18 (1), section 19 (2), and then section 19 (1) should be studied in turn, in order to arrive at this conclusion.

What, it will be asked, is the position of a lessee who should have registered, but has not done so? *Brickdale* (p. 59) considers his position regulated, to some extent at any rate, by *Walsh* v. *Lonsdale*, 21 Ch. D. 9. The writer of the learned article on p. 181, vol. 72, of the *Solicitors' Journal* takes a different view. He compares a lessee in that position to a tenant in tail (in the days before 1926) who had barred the entail, but had not yet enrolled the disentailing assurance. So long as the time for such enrolment had not expired, the disentailing tenant in tail was in much the same position as is a lessee for more than twenty-one years who has not yet registered his title. At any time such lessee may put matters right by registering his leasehold title.

Such questions are highly interesting, and are of some practical importance. We shall refer later to the extremely important

question of "sanctions", *i.e.*, the penalties for failing to register in an appropriate case. Some will compare the period of grace, apparently indefinite, allowed to a lessee in a case where the freehold is registered, to the short and definite period of two months specified in section 123 (1) of the Act. Section 123, as we have pointed out, only applies where the freehold is unregistered, but in a compulsory area.

But, to vary the quotation made in another connection, no wise lessee of registered land would omit to register his title, when it was clearly necessary, unless he was ambitious of giving his name to a leading case.

It will then be asked whether it is certain that these rules for registration of leases apply in cases where the freehold has been registered voluntarily. On this point we would refer to an interesting article on p. 52 of vol. 18 of *The Conveyancer* (1932—1933). On p. 53 the learned writer says:

"In order, therefore, to ascertain what bearing the above provisions"—*i.e.*, the material portions of sections 18 and 19—"have upon the granting of leases of registered land situate in non-compulsory areas, it will be necessary to determine what is meant by the expression 'registered land'. This is defined by section 3 (xxiv) of the 1925 Act as 'land or any estate in land the title to which is registered'. No distinction is drawn in the definition between land which is registered compulsorily and that which is brought on the register under the voluntary provisions of the Act. That being so, the definition must, it is submitted, be intended to embrace both classes of land."

We can now return to the contentions of the articles on pp. 96 and 181 of vol. 72 of the *Solicitors' Journal*.

The writer of these articles states his definite conclusion that a lessee for a term of more than twenty-one years (see section 19 (2) of the Act and its proviso) of registered land, whether in a compulsory or non-compulsory area, should apply for registration of himself as proprietor of the estate transferred, *i.e.*, of the term created by the lease. The writer also deals with section 48 of the Act, which requires notice of certain leases to be registered against the freehold. Section 48 appears to have caused a great deal of misunderstanding. Too beneficent a view seems to have been taken of its working. It was sometimes regarded as a kind of make-weight. So long as one complied with its provisions, and duly caused notice of the lease to be registered against the freehold, failure to register the lease itself might be forgiven. Conversely, if the lease itself were registered, as a separate entity, it would

not matter greatly if notice had not been registered against the freehold.

Once again, learned opinion has played havoc with legal optimism. The writer of the two articles in question in vol. 72 of the *Solicitors' Journal* insisted that it was not sufficient to register notice against the freehold in the case of a grant of a lease exceeding twenty-one years of registered land. Such registration of notice would not convert the claim into a valid lease. He referred to section 52 of the Act and to *Brickdale's Land Registration Act, 1925* (3rd ed., 1927), p. 215, note (*f*). In addition to registration of such notice, the lease itself should be registered as a separate entity under section 8 of the Act.

On the other hand, it is most important to apply for registration of notice of such a lease under section 48 of the Act. For the very serious consequences that may result from failure to register such notice, see *Potter's Registered Land Conveyancing* (1934), p. 248.

It came to be seen, therefore, that the legal position as regards registration of leases was very different from that which was imagined to be the case. In outline, we may put the true situation as follows, bearing in mind that the great distinction is between cases where the freehold is registered and cases where it is not.

A. If the freehold is registered, whether voluntarily or compulsorily, and a lease is granted out of it:

(1) If the lease granted out of such registered freehold is for twenty-one years or a shorter period, granted at a rent, without taking a fine, it is an "overriding interest". See section 70 of the Act, but note that the power of entering a notice against the freehold mentioned in section 70 (3) is merely permissive—*Brickdale*, p. 171, n. (*f*).

(2) If the lease is for more than twenty-one years, it should be registered as a separate title.

(3) In the event of (2), notice of the lease should be registered against the freehold under section 48 of the Act.

B. If the freehold is not registered, but is in a compulsory area, the title to a lease of forty years or more (*not* "more than forty years") granted out of such unregistered freehold must be registered under section 123 of the Act. Apparently it may be registered if it is for more than twenty-one years.

Difficult problems remain in the case of class B. Obviously notice of the lease cannot be registered against the freehold which is itself unregistered. But, if the freehold is subsequently sold, the leaseholder, even if he has duly registered his leasehold title,

may be excused for feeling nervous. No certain remedy for his anxiety seems to have been found.

Problems continued to arise out of the subject generally. We have already referred to the article on p. 52 of vol. 18 of *The Conveyancer* (1932—1933). The subject was dealt with, in a more contentious form than previously, in three articles in the *Solicitors' Journal* for 1936. The writer of the first two articles of those three, Sol. J., vol. 80, p. 176 and p. 396, referred to the confusing state of the law, and to various problems arising out of it. The second article, on p. 396 of vol. 80, raises the question of "sanctions", and it certainly is far from clear what penalties follow from failure to register in an appropriate case. This is surely a highly practical point, and by itself should meet the objections of those who consider the problem of leases of registered land to be no more than a nice academic question.

It is a great deal more than that. Questions arising out of it are constantly occurring in practice. A dispute may arise whether a lease of registered land for, say, ninety-nine years in a non-compulsory area should have been registered. See vol. 80 of the *Law Journal* (1935), p. 48, and *Wontner's Land Registry Practice* (3rd ed., 1935), p. 4. However obliging and efficient the officials of the Land Registry may be—and practising lawyers know that these are not merely empty terms of flattery—it would obviously be undesirable to refer all such disputes to them.

This brings us to a very brief consideration of what is probably the most stimulating of all the recent articles on Registration of Leases. We refer to the article on p. 456 of vol. 80 (1936) of the *Solicitors' Journal*. This was apparently written in reply to the two articles which appeared earlier in Sol. J., vol. 80, on the subject. It contains much that is interesting, and throughout it has the tone of authority. It seems to admit an anomaly in the various limitations of leases which must be registered. Thus section 123 prescribes forty years and upwards for the cases covered by it, *i.e.*, where the freehold is unregistered but in a compulsory area. But where the freehold is registered, either voluntarily or compulsorily, the limit, as we have shown, is upwards of twenty-one years. The writer of this authoritative article, however, appears to think that such points are of little importance. He ends the paragraph dealing with this anomaly with these words: "And in any event, leases for such terms" (*i.e.*, between twenty-one and forty years) "are nowadays becoming so unusual that they may not unreasonably be disregarded".

This authoritative article appears to take the same view of the legal position of registration of leases as that which we have given

in outline. Indeed, this view seems to have been taken by all the learned writers who have dealt with the subject. It would certainly be of the greatest interest to know of any learned opinions which take a fundamentally different view. The fact that the various opinions which we have mentioned all reach substantially the same conclusions is surely strong evidence that those conclusions are sound. Whether it is right that such vital questions in respect to registered land should have to be answered by reference to learned opinions, is a matter with which we cannot deal in the present article. It is certain that there are some who will not remain satisfied in such cases with mere opinions, however learned these may be.

Nevertheless, the theoretical solution, as we have shown, is constant. But the practice shows wide variations. There can be little doubt that a large number of leases, in cases where the freehold has been registered voluntarily, have been allowed to go unregistered, though they have been for terms requiring registration. There is often an actual dispute on the point. See, for instance, p. 48 of vol. 80 (1935) of the *Law Journal*, to which we have already referred. Despite the general consensus of opinion, it will remain difficult to convince some solicitors that a lease for, *e.g.*, ninety-nine years when the freehold has been registered voluntarily needs to be registered as a separate entity. A number of otherwise learned lawyers continue to place too much reliance on section 48 of the Act, though it would seem obvious that its provisions are merely subsidiary to the actual registration of the lease. As for section 123, it is probably the most frequently misconstrued of any in the Act.

Looking at the problem as a whole, we cannot help feeling that nothing like sufficient importance has been attached to it, either in theory or in practice. It may be uncertain what penalties follow in cases of non-compliance, but the wise lawyer will not wait for penalties. *Vigilantibus, non dormientibus, jura subveniunt* is as true in respect of land registration as of any other branch of the law.

All lawyers, therefore, whose work brings them in any way in contact with registered land, should study the problem of registration of leases. The main features in this problem are, in our view,

(a) the true scope of section 123 of the Act,

(b) the need for registration of *all* leases for more than twenty-one years of registered land, whether the freehold has been registered voluntarily or compulsorily, and

(c) the true functions of section 48 of the Act.

All of these are likely to grow very greatly in importance with the increase in registration. In particular, section 123 will have more and more weight attached to it with each extension of the compulsory areas. There are, of course, a number of subsidiary questions in regard to the problem. We have briefly mentioned a few of such questions in this article, but the earnest student of land registration will find a great wealth of material in the whole topic. But the time has surely come for all lawyers to take a more serious interest in the problem of leases of registered land.

ASSENTS AND ACKNOWLEDGMENTS.

By A. H. Cosway.

It is rather surprising, so long after 1925, to find that the importance of assents and acknowledgments in respect of probates and letters of administration is apt to be overlooked or disregarded in practice. One frequently encounters abstracts of titles in which assents are not abstracted, and when called for they are at times produced from bundles of correspondence and general papers, being filed as if of just temporary importance. Again, it is not unusual that an assent is written upon a not very durable substance notwithstanding that in law an assent forms a necessary and integral part of the legal title to property.

The object of a written assent is to clear up the difficulties which hitherto existed when purchasing either directly or indirectly from a personal representative—such difficulties as are illustrated in the case of *Wise* v. *Whitburn*, [1924] 1 Ch. 460, where, after executors had assented to property specifically bequeathed, they purported to sell as executors, or in the case of *Re Verrall's Contract*, [1903] 1 Ch. 65, as to whether a purchaser could accept a title from a personal representative if he (the purchaser) had knowledge that all the debts and liabilities of the testator or intestate had been discharged.

To remedy this, section 36 (4) of the Administration of Estates Act, 1925, provides that :—

> "An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate."

In view of this, whenever a solicitor is engaged in the administration of the estate of a testator or intestate who was possessed of real or leasehold property, it should be regarded as a universal and inflexible rule that the administration has not been completed until there has either been a sale by the personal representative of such property, or an assent prepared and signed by the personal representative vesting the property in favour of some person or

persons—either to himself, if he is absolutely entitled, or in favour of themselves if the executors are also trustees for sale, or, if the property is settled land, in favour of the person or persons who under the Settled Land Act, 1925, is, or are together, the tenant for life under those Acts. In connection with such an assent, it should be remembered there must be three acts, the preparation of the assent itself, an acknowledgment given for the production of the grant, and an endorsement on the grant of a memorandum of the assent.

One frequently finds that where the property is given to the executor, or where an administrator is the only person entitled to the property, no assent is given on the ground that the legal estate is already vested in that person by the grant and he therefore has full power to deal with the property. This is an unwise practice to adopt because in the event of the death of the personal representative without having executed any assent, there is a break in the representation which will have to be remedied in dealing with the property, and if the personal representative should have been an executor and have died intestate or have been an administrator a grant of administration *de bonis non* may be called for to put the title in order.

A more frequent error is when an assent is given without being coupled with an acknowledgment in respect of the grant. In the earlier editions of some of the text-books the need for this acknowledgment is not mentioned and it seems that until the case of *Re Miller and Pickersgill's Contract*, [1931] 1 Ch. 511, the fact that all grants dealing with real or leasehold property must, since the passing of the Administration of Estates Act, 1925, be the subject of acknowledgment, was not fully recognised.

Probably, the most usual case in which the acknowledgment is omitted is an assent by a personal representative in his own favour. It has been suggested that in this case an acknowledgment is not appropriate or correct, because section 64 of the Law of Property Act, 1925, which deals with acknowledgments, provides that "where a person retains possession of documents, and gives to *another* person an acknowledgment in writing of the right of that other to production of those documents and to delivery of copies thereof etc." and therefore the section does not apply when the personal representative and the devisee is the same person. Again, it is argued that an acknowledgment implies a covenant on the part of a person giving it and a person cannot covenant with himself.

It is easy to marshal a few facts in answer to these queries (1) It is agreed that a person *can* make an assent in his own

favour and section 36 (3) of the Administration of Estates Act, 1925, provides that "the statutory covenants implied by a person being expressed to convey as personal representative, may be implied in an assent in like manner as in a conveyance by deed." (2) It must be remembered that it is now possible for a man to convey property to himself without the medium or interposition of a nominal trustee as was necessary by the old law under the Statute of Uses. For instance, section 72 (3) of the Law of Property Act, 1925, expressly provides that "After the commencement of this Act a person may convey land to or vest it in himself." (3) Under a more modern Act, *i.e.*, the Tithe Act, 1936, s. 17, we have another illustration of the tendency of modern law to regard the same person acting in two capacities as two separate individuals. By that section it is provided that where a man owns a part of a property in his own right and another part in a representative or fiduciary capacity, it is regarded as two ownerships, and the property is considered to come within the definition of property in the ownership of two or more persons.

On the faith of these facts, there should be little hesitation in including an acknowledgment for production in an assent in one's own favour.

It is recognised that if the acknowledgment is not included in the assent, it could be included in any subsequent conveyance by the personal representative as beneficial owner, or given by him by a separate document, provided of course the grant is still in his custody, but experience shows this is then often overlooked. The omission doubtless in most cases arises from the fact that the conveyance may be taken from a precedent of a conveyance by an absolute owner in which there is no reference to an acknowledgment in respect of a grant, as that acknowledgment is always given by a personal representative.

If a purchaser has bought without obtaining the acknowledgment, he may wish to sell again after the death of the personal representative, and he may then be put to the delay, trouble and possible expense of having to trace who was then in possession of the grant and able to give the required acknowledgment. In consequence of the endorsement which has to be placed on the grant, it is no longer sufficient to inspect the grant at the Probate Registry as there would naturally be no notice of the endorsement there.

There may be occasions in the case of settled land when it may be convenient to postpone the giving of the vesting assent, especially where the tenant for life is of full age and does not call for the assent. Pending the giving of the assent, the personal

representatives have all the powers of a tenant for life and of the trustees of a settlement (assuming of course no other trustees have been nominated by the will for the purposes of the Settled Land Act) and in the event of the death of the tenant for life before the vesting assent has been executed in his favour, there would be no need for obtaining a special grant in respect of the settled land, but the assent could be given to the succeeding estate owner. In such a case, the death of the tenant for life would not be a matter of concern to a subsequent purchaser, as his interest would not appear on the title to the legal estate, but would be traced from the personal representatives who had not assented to the person to whom the assent was ultimately given. Any duty arising from the death of such tenant for life would be accounted for by the personal representative on a CI. form without the need of a grant.

There are cases where title has to be made from a series of wills or intestacies, and in this respect the endorsements on grants will be useful, provided they show the property in respect of which the assent has been given. If an endorsement of an assent to Whiteacre is endorsed on a grant in 1926 in favour of A B and the executors of A B wish to sell the property after his death, say in 1940, the fact of such an endorsement would be useful evidence of the seisin of A B and the former owner.

The absence of an endorsement of an assent on a grant would leave the way clear for any fraudulent dealing with a property.

DEALINGS WITH LAND IN MIDDLESEX.

Experience has shown that the effect of the Land Registration Act, 1936 (*ante*, p. 94), and the order for compulsory registration in Middlesex has given rise to doubts in the minds of practitioners not constantly in touch with Registry transactions, and the writer has been asked for a short note explaining the present position to those not familiar with the practice.

The effect of abolition of all registration in Middlesex, except as hereafter mentioned, has not automatically put all the land in Middlesex on the register of the Land Registry. It has simply put most dealings with land in Middlesex temporarily on the footing of unregistered conveyancing, subject to slight modifications. Where these dealings fall within the rules for compulsory registration, then the principles applicable thereto must be followed. It will be most convenient, therefore, to deal with certain headings, remembering, however, that the Land Registry is concerned with dispositions affecting the legal estate : L. R. Act, s. 2 (1).

Dispositions of the fee simple.—A legal estate in fee simple is capable of being registered and may be registered independently of any dealing. It *must* be registered within two months (subject to modifications (*a*)) of any conveyance *on sale*. If there is a voluntary conveyance it is not necessary to apply for registration, although no memorial can be registered in Middlesex, and a conveyance on sale does not include a conveyance of mines and minerals apart from the surface (*b*), nor an assignment or surrender of a lease to the owner of the immediate reversion where the term is declared to merge (*c*), nor an exchange where there is no money paid for equality (*c*). In these cases the ordinary rules for unregistered conveyancing will apply.

If the disposition is one in respect of which compulsory registration applies, the purchaser will take a conveyance in the ordinary form applicable to unregistered land. It may be convenient to remark here that, apart from any Land Charges searches, the purchaser should also obtain by post (*d*) an official search in the Middlesex Deeds Department (see p. 434 for the Rules), and it is

---

(*a*) See Potter, Registered Land Conveyancing, p. 4.
(*b*) L. R. Act, s. 120 (1).
(*c*) L. R. Act, s. 123 (3).
(*d*) Personal search cannot be made.

desirable also to search the Index Map of the Land Registry to see that the land is not on the Register already (see p. 294). On completion of the transaction the purchaser must apply on Form I for first registration as proprietor under the Land Registration Act complying with the requirements : see L. R. R. 20 (*e*).

Leases.—Every grant of a term of years absolute, not being less than forty years from the date of delivery of the grant, must be registered (L. R. Act, s. 123 (1)), except that a lease with an absolute prohibition against assignment (L. R. Act, s. 8 (2)) and a mortgage term in which the right of redemption still subsists cannot be registered : L. R. Act, s. 19 (2). It does not appear that consideration is necessary to make it compulsorily registrable. Grants of lease are for practical purposes on the same footing as conveyances of the fee simple. It may be convenient to add that the fact that the freehold title is not registered does not seem to affect the necessity of registering the leasehold title, but if the freehold title is already registered the grant of a lease is a disposition which must comply with the rules for such dispositions under the Land Registration Act, as is discussed in an earlier article in this volume. What is said of a lease applies equally to an underlease. In any event the lease will be made in the same form as in unregistered conveyancing except that where the freehold title is registered there must be a sufficient indication of the details to enable it to be noted on the freehold title.

A lease exceeding twenty-one years, not compulsorily registrable, may be registered. In any case the registration of the lease does not automatically register the freehold title, so that on an appropriate disposition after the registration of the lease it will still be necessary to make an application for first registration of the freehold. It is not the land which is registered, but the interest in the land.

In the case of an already subsisting lease registration of the freehold proprietor will not constitute registration of the lease, though the lease will be noted on the freeholder's title. Consequently where a lease was subsisting prior to January 1, 1937, it is necessary for a purchaser, who is defined as in the case of freehold mentioned above, of any assignment having not less than forty years to run at the date of the assignment to apply for registration as proprietor of the leasehold title. Here again a search of the Index Map and an official search of the Middlesex Deeds Registry prior to completion is desirable.

Similarly the assignment will be in the form applicable to

(*e*) For details see Potter, *op. cit.*, p. 43.

unregistered conveyancing before the purchaser applies for his first registration.

Mortgages.—Where a mortgage is registered in Middlesex prior to January 1, 1937, a discharge can be registered in the Middlesex Deeds Registry within two years: L. R. Act, 1936, s. 2 (4). Application accompanied by a memorial must be made by post.

Otherwise the creation or transfer of a mortgage is not affected by the requirements of compulsory registration and apparently until the freehold or leasehold title affected is registered these transactions will be carried out as in the case of unregistered land, leaving the title in a somewhat anomalous state. A mortgage created after January 1, 1937, can be discharged without registering the discharge since the provisions of the 1936 Act apply only where the mortgage was registered prior to that date.

Other interests.—The creation or transfer of other interests, such as easements or profits, are not affected by the requirement of compulsory registration, and of course this applies with greater force to interests operating only in equity. Until the registration of the title to the interest or interests against which they operate any disposition affecting these interests now are governed by the ordinary rules for unregistered conveyancing. In this respect there is a great difference from the position under the Middlesex Registry Act, 1800, which required all, or nearly all, these instruments to be registered to preserve priority until this was modified by section 11 of the Law of Property Act, 1925, which confined the necessity of registration to instruments creating, transferring or charging legal interests. Before undertaking any such disposition under the system of unregistered conveyancing, however, it will be desirable to search the Index Map (*supra*) to ensure that the land is not on the register because the creation of these interests may be affected by the Land Registration Act if the title affected is registered.

It may be convenient to add that if on investigation of title an instrument appears which should have been registered prior to 1937 on the Middlesex Registry, this can still be done within two years from 1936: L. R. Act, 1936, s. 2 (3). Application is by post.

NOTES OF RECENT CASES.

1. *CONVEYANCING AND REAL PROPERTY CASES.*

Settled land—trust for sale—tenant having powers of tenant for life.—Re Beaumont Settled Estates, [1937] 2 All E. R. 353, must be noticed on three points: first, the relation between trust for sale and settled land; secondly, the cases falling within the Law of Property Amendment Act, 1926, s. 1; and thirdly, the effect of section 23 of the Settled Land Act, 1925, in ascertaining the persons having the powers of tenant for life.

The facts were very complicated, but it would appear that in 1932 the land was in equity vested in A in fee simple (A having barred an entailed interest), subject to certain jointures provided for by a settlement of 1899 and deeds of covenant and appointment in 1926, and also subject to certain mortgages which do not appear to be relevant. The legal estate was vested in A by a vesting deed. In 1932 A appointed and granted to trustees his interest, providing that so soon as they effectively could they should obtain a grant of the legal estate, and that they should stand possessed of the property on trust for sale and hold the proceeds upon a discretionary trust. By a later clause it was declared that the powers of a tenant for life were conferred upon A during his life and after his death so long as the land continued to be settled land upon the trustees for sale. Owing to the necessity of raising money for improvements the question arose whether A was the person having the powers of a tenant for life. Clauson, J., held that the settlement in favour of the trustees was intended to be a settlement of the equitable interest and did not operate to convey a legal estate under the Law of Property Act, 1926, s. 1; that there was no immediate binding trust for sale for the purposes of section 1 (7) of the Settled Land Act, 1925, and hence the land remained settled land; and that in view of the discretionary trust there was no person entitled to the powers of a tenant for life for the purposes of sections 19 and 20 of the Settled Land Act, 1925, and since A had been expressly nominated by the settlement he was entitled to exercise those powers by virtue of section 23 (1) (a) of the Settled Land Act, 1925.

The arguments reported in this case should be read carefully, since the judgment, as reported, contains no reference to the decisions cited. The first point is one largely of fact and the learned Judge did not state exactly why he held that the document was clearly intended to operate only in equity, but presumably (see p. 360) he was of opinion that its general form indicated that it was intended only to operate in equity and by way of exercise of a power of appointment, which since 1926 can operate only in equity. It is of interest, however, to note that apparently the Law of Property Act, 1926, s. 1, will not inevitably apply, and therefore it would appear that where this is intended an express reference is desirable.

On the heading of immediate binding trust for sale the only reasons given in the report are " in the circumstances, and on the true construction of the document ".

It should be noted in this case that prior to the execution by A of the deed of appointment and grant the legal estate was vested in A as estate owner under the Settled Land Act, 1925, and that this fact played a part no doubt in leading the learned Judge to hold that the deed operated only in respect of the equitable interest. It would in fact constitute a derivative settlement, and as such and pending the extinction of the prior interests created under the settlement constitute a compound settlement of all the instruments creating the settlement. Effect, therefore, should be given to it by a fresh vesting deed executed by A containing the particulars required by section 5 of the Settled Land Act, 1925.

If the deed operated only in equity section 1 of the Law of Property Act, 1926, could not apply, because that section deals only with the conveyance or creation of a legal estate. Whether the absence of any mention of the statutory power would lead to the conclusion that the equitable interest only was intended to be dealt with does not appear, and in any case this reasoning could not be applied to the case of a sale or other valuable consideration, but could be applicable only to a settlement in such a case as the present. At least so it is thought, since otherwise presumably the effect would be an informal settlement which might fall within section 9 of the Settled Land Act, 1925.

With regard to the trust for sale the reason given must be noted, since it is different from that in the earlier and well-known cases of *Re Leigh's S. E.* (*No.* 1), [1926] Ch. 852; *Re Parker's S. E.*, [1928] Ch. 247; *Re Norton*, [1929] 1 Ch. 84. The relevant facts do not appear to be markedly different from *Re Leigh's S. E.* (*supra*) (from which Romer, J., dissented in *Re Parker's S. E.* (*supra*)), since in both cases the only interest taking priority over

the conveyance to the trustees for sale was a rentcharge created by an earlier settlement. The important factor is whether in this case the learned Judge meant to imply that the absence of intention to create such a trust for sale is material in determining whether or not a trust for sale is " binding " for the purposes of the Settled Land Act, 1925. Assuming that such absence of intention is material it is thought that it can only be effective where the trust for sale could as a matter of law within the other decisions be held to be binding. In fact this attitude towards " binding " is something of a counterpart to the old cases on trust for sale for the purposes of the Settled Land Act, 1882: cf. *Re Johnson*, [1915] 1 Ch. 435.

With regard to the application of section 23 of the Settled Land Act two matters may be remarked. In holding that there was no tenant for life for the purposes of sections 19 and 20 of the Act the decision naturally follows on the line of other cases such as *Re Frewen*, [1926] Ch. 580, where the trustees and a life tenant were entitled between them to the income. Section 23 was obviously designed to meet such a case as the present, and in the absence of any person expressly designated as in the present case the effect of the section would be to make the trustees of the compound settlement the estate owners for the time being: cf. *Re Frewen* (*supra*). Since the trustees for sale would not in many cases be the trustees of the compound settlement, it then becomes clear that the settlor should take steps in the instrument creating the trust to nominate expressly either the trustees themselves or some other person to be estate owner, unless of course it is his intention that the trustees of the compound settlement should act. In this connection, attention might also be called to *Re Craven's S. E.*, [1926] Ch. 985, where it was held that a person nominated to act as estate owner can refuse, at the appropriate time, to act as estate owner, when the trustees of the settlement will act in his place.

Mortgagee's costs—registered land.—Re Leighton's Conveyance, [1937] 1 Ch. 149, is of interest directly on the position of a mortgagee's costs in defending his title, and secondly and indirectly on the question of rectification of the Land Register. In proceedings before Luxmoore, J., which unfortunately do not appear to have been reported, X, the respondent to this appeal, applied to have the Register rectified against Y on the alternative grounds that Y was registered as proprietor under a forged transfer or that the transfer was executed under undue influence or by fraudulent mis-

representation, and also that certain registered charges created after registration of Y, of which the appellant was the first in priority, should be expunged. Luxmoore, J., held that the transfer was executed by reason of undue influence or fraudulent misrepresentation and was therefore voidable, and directed that X was entitled to be registered as proprietor, but that the charges being made in good faith on the part of the chargees should be valid. The learned Judge refused to award any costs and directed that the costs should not be added to the security. It was against this part of the order that the appellant appealed. The Court of Appeal unanimously reversed the order of Luxmoore, J. The Court held that the principle was not one merely of awarding costs in an action, but of the well-recognised rule that where a mortgagee is put to expense in defending his title to the estate he is entitled to add those costs to the amount of his security. The circumstances were peculiar because X was not liable in costs in any event as she sued as a poor person, but the effect of this order would be to render her estate liable in costs since the security would have to bear them. In effect the Court of Appeal's decision amounts to this—that the discretion in awarding costs does not apply to the right of the mortgagee to add the costs to the security, and see Romer, L. J. (at p. 154), citing from Page-Wood, V.C., in *Parker* v. *Watkins*, John. 133, at p. 137.

Indirectly, no doubt to be treated as *obiter dictum*, the Master of the Rolls approved the decision of Luxmoore, J., on the subject of rectification of the Register. This is a subject which is largely free of authority, and judicial authority is welcome. In the action before Luxmoore, J., apparently it was pleaded in the alternative that the transfer was voidable on the ground of fraud or void as "*non est factum*"; but the learned Judge ordered the Register to be rectified as against the trustee in bankruptcy of the transferee, but directed that the charges were valid. The Master of the Rolls said (at p. 152): "That would naturally follow if the learned Judge were satisfied that the conveyance was obtained by fraud, but that before the conveyance was set aside the charges had been duly executed by the then registered proprietor, and the chargees had taken in good faith and without notice."

It would seem, therefore, that the Register cannot ordinarily be rectified against chargees who have taken on the strength of a registered title in good faith and without notice where the registered proprietor had a voidable title only. Whether it could be rectified against chargees in the event of the transfer being void does not appear from the case as far as we have it, but under the Land Registration Act, 1925, s. 82 (4), it is not clear whether this is so.

The relevant passage reads that the Register will be rectified where "the immediate disposition to [the registered proprietor] was void or the disposition to any person through whom he claims *otherwise than for valuable consideration* was void". Whether in the event of the registration of the proprietor being rectified this will involve destruction of the subsequent transactions remains doubtful, and it is to be regretted that more light on it has not been thrown by the case here noted.

Mortgage—covenant not to lease without consent.—Iron Trades Employers' Insurance, Ltd. v. *Union of House, etc., Ltd.* (1937), 53 T. L. R. 341, is of considerable interest to conveyancers, since it turns upon the construction of the not uncommon covenant that the borrower "shall not without the previous written consent of the mortgagees exercise the power of leasing . . . conferred by the Law of Property Act, 1925, on a mortgagor while in possession". In this case, shortly after the mortgage the borrowers, the defendants in this action, in fact did grant a yearly tenancy agreement of part of the premises mortgaged without the knowledge or consent of the mortgagees. In the particular case it was important because if this constituted a breach of the covenant the mortgage money would have become due at an earlier date, but manifestly it is of equal, or of greater, importance with respect to the date at which the statutory power of sale becomes exercisable. Farwell, J., held that there was no breach of the covenant in granting the tenancy agreement. The learned Judge held that the existence of the statutory power did not affect the pre-existing common law power to grant a lease which, however, was not binding upon a mortgagee who had no knowledge of and had not consented to it; that the existence of the covenant in the mortgage prevented any purported exercise of the statutory power from having any effect other than that which it would have had prior to the statute, and that, therefore, there was no breach of the covenant because there was no exercise of the statutory power.

The effect of this decision on the position of both the mortgagor and the tenant is important. It would seem that any lease not within the statutory power is binding on lessor and lessee and consequently if the existing mortgage was paid off it should be binding on any person who subsequently acquires a title through the lessor. This, however, must, it is thought, be subject to the fact that the lessee can in fact only take an equitable interest if the mortgage in existence was by way of the grant of a term of years,

since the grant of the lease must be in respect of the equity of redemption in the term vested in the mortgagor. In the case noted, and in many other cases, the mortgage was by legal charge, and in such a case the lessee would presumably be the owner of a legal estate, which on the existing mortgage ceasing without avoidance of the term would become indefeasible. This is only a tentative suggestion, however, but it may require consideration in the not unlikely event of unauthorised terms again coming up for determination.

From the point of view of the mortgagee it is no doubt desirable that the right of the mortgagor to grant any lease, whether or not it be binding on the mortgagee, should be limited. For this reason it may be desirable to amend the common form covenant to exclude the right of the mortgagor to exercise any power of leasing, whether statutory or otherwise, without the written consent of the mortgagee. It is thought that such a covenant would be broken in a like case to the present.

Mortgage—right to title deeds.—In *Lewis* v. *Plunket* (1937), 53 T. L. R. 299, the point of principal interest generally was the decision by Farwell, J., that where a mortgagee's title to the mortgage is extinguished by the absence of any payment of principal or interest or any written acknowledgment for twelve years, the mortgagee ceases to have any right to retain the title deeds as against the mortgagor. On the facts, which do not appear to be of great interest, there was a claim that a written acknowledgment had been made, but this presented no difficulty. As Farwell, J., pointed out, *prima facie* the legal owner is entitled to the custody of the title deeds, and though in exceptional circumstances this may be refused (see *Clayton* v. *Clayton*, [1930] 2 Ch. 12, cited by Farwell, J.), yet in this case the learned Judge could find no reason for bringing it within any exception. No doubt this represents a distinction between the Real Property Limitation Acts, 1833-74, which bars the right, and the Limitation Acts which only exclude the remedy by action. It is thought that in any case falling under the latter statutes no claim for the return of title deeds could be substantiated.

Deed—omitted words—construction.—Re Hargrave's Trusts, [1937] 2 All E. R. 545, may be welcome to solicitors who are oppressed by apprehension of clerical errors, though it cannot be taken far. A recital in a settlement expressed the desire of the

settlor to benefit certain grandchildren by a particular marriage. In one of the settlement clauses the trust was expressed to be subject to a power of appointment in favour of such grandchildren "as being male shall have attained the age of twenty-one years or being female shall have married under that age." Farwell, J., held that it was apparent that females attaining the age of twenty-one years unmarried were intended to benefit according to the tenor of the usual clause and construed the settlement so. He said (at p. 547): "When the meaning is plainly written throughout the document, from beginning to end, and I find a mistake made in copying a common form, which may operate to defeat the object for which the settlement was made, I am justified in construing the settlement in the way it was intended it should be read"; but he added a warning that it might be more difficult to bring in words of this kind when dealing with a settlement and not a will.

Easement—grant "as at present enjoyed".—Hurt v. *Bowmer*, 53 T. L. R. 325, dealt with a short point of considerable practical importance. The defendant was the grantee of a field to which access was over a way across a drive then in the occupation of the grantor, who conferred an easement over the drive in the following terms: "A right of way as at present enjoyed over adjoining property of the vendor as a means of access." At the time of the grant the grantee mainly used the premises for agricultural purposes though certain parties had camped in the field. Later the field was generally used for camping purposes, thereby greatly increasing the traffic over the drive, and the grantor's successor in title brought an action to restrain this increased user. Bennett, J., held that "at present enjoyed" referred not to the quantity of user but only the quality, that is to say, whether it was a footway, horseway, or way for vehicular traffic, and refused to sustain the action. The learned Judge drew a distinction between "as at present enjoyed" and "as at present used", and seems to have been of opinion that if restricted by the latter phrase it would be limited to the user immediately to the date of the grant.

Contract—conditional on purchaser's solicitor approving the lease.—Caney v. *Leith* (1937), 53 T. L. R. 596, is yet another case arising out of the attempt of vendors to bind and purchasers to avoid being bound by a contract prior to submission to the parties'

solicitors. The vendors, as executors, were selling a lease of an hotel and after protracted negotiations drew up a document purporting to state the effect of the negotiations concerning price, etc. The agreement was, however, declared to be subject, *inter alia*, to the purchaser's solicitor approving the lease. Farwell, J., had no difficulty in holding that this reference to the lease meant that the lease to be sold had to be approved as satisfactory by the purchaser's solicitor. He then held that it was a conditional contract, and as the purchaser's solicitor objected to the lease on the ground that it was not suitable to the purpose he refused to grant specific performance and ordered the return of the deposit, which was in the hands apparently of a stakeholder. The case contains a discussion of the principal cases on the condition of approving title, etc., by the purchaser's solicitor, and the learned Judge makes it clear that the first question is whether there is a condition that the title or lease must be approved by the solicitor, and not merely that the solicitor is to be satisfied that no new term is to be inserted. Apart from this, this decision is important for emphasising that the condition means that the solicitor can refuse to approve on any reasonable ground. The learned Judge said (at p. 600): "In these circumstances what do the learned Judges mean when they talk about 'unreasonable'? In my opinion . . . they are dealing with a position where the solicitors are not acting in good faith, that is to say, where to assist their client and get him out of the contract, or for some other reason, the solicitors refuse to approve the lease without giving the matter any consideration at all, or where their reasons for disapproval are so patent and absurd that the Court can say in a moment: 'This is ridiculous and the solicitors cannot make such an objection as that.'" The learned Judge then went on to say that it was not for the Court to hear evidence from the solicitors, but to look at the documents to see whether such approval is unreasonable.

Lease—acquisition of light by lessee—consent in writing.—The fact that a lessee can acquire an easement of light under the Prescription Act, 1832, s. 3, against land held by his lessor has more than once given rise to difficulty and is not always sufficiently considered in granting leases. A lessee will acquire an easement of light in respect of any building after twenty years' user "unless the same was enjoyed by some consent or agreement, expressly made or given for that purpose by deed or writing". Once the right has been acquired it is exercisable against a common landlord

and all succeeding owners of the servient tenement: *Morgan* v. *Fear*, [1907] A. C. 425. In *Willoughby* v. *Eckstein*, [1937] 1 Ch. 167, the plaintiff claimed a declaration that he had a prescriptive right to light over adjacent land occupied by lessees of the same landlord. The plaintiff's tenement was leased to him after the adjoining premises with buildings had been leased, but the defendants claimed under a more recent lease. In the plaintiff's lease was an exception: "Subject to the adjacent buildings or any of them being at any time or times rebuilt or altered according to plans as to light elevation extent and otherwise . . . approved of by the ground landlord." The substantial defence to the proceedings then lay in the plea that the light was only enjoyed by written consent. Luxmoore, J., held that the plaintiff was entitled to the declaration sought and that the clause was insufficient to prevent a prescriptive claim to light.

It may be observed in passing that as the servient tenement was already leased at the date of the plaintiff's lease there could be no question of an implied grant of light in the lease and, therefore, the clause could not be regarded as intended to prevent any implied grant by the lease: cf. *Foster* v. *Lyons*, [1927] 1 Ch. 219. This, of course, makes the decision stronger than otherwise it might have been, since the clause becomes operative only in the event of no intermediate acquisition of a right of light by prescription. There was furthermore in the deed an exception in the lease against including any rights of light or other easements over other ground or premises and subject to all easements, etc., belonging to any adjacent property.

The learned Judge examined the cases in which exceptions and reservations were held to constitute an exclusion of the prescriptive right but held that the clause amounted only to an agreement that no grant of a right should be contained in the lease.

In such circumstances lessors should, therefore, take the precaution to protect their adjacent land from any acquisition of a right of light, involving consequent restriction upon subsequent building, by a more direct clause such as that in *Foster* v. *Lyons* (*supra*), which was "reserving, nevertheless, to the lessor, and his lessees and tenants, full right to build to any height upon the land adjoining the premises hereby demised, notwithstanding such buildings may obstruct any light on the land hereby demised".

Sea wall—easement—acquisition of right to breach.—Symes v. *Essex Catchment Board*, noted *ante*, p. 71, has been reversed by

the Court of Appeal ((1937), 53 T. L. R. 180), but upon a different ground from that forming the main part of the note save that the Court of Appeal held that no right could be acquired by prescription nor by any grant save from the Crown to make or maintain a breach in a sea wall. Indeed, some doubt was expressed whether even the Crown could make a grant. The reasoning is not without importance generally. The Court was of opinion that sea walls were erected under a general obligation of the Crown to fence the country against inroads of the sea as well as inroads from enemies of the State. Since this was the purpose of the sea wall it was not possible, therefore, for a subject to acquire a private right to the continuance of a breach in the sea wall for the purpose of allowing water to pass into land protected by the wall. The issue is one primarily of a constitutional character and therefore does not require a longer note in this place.

Will—construction—release of debts.—Midland Bank Executor, etc., Co. v. *Yarner*, 53 T. L. R. 403, should be noted with care in view of the tendency to release debts by will. The clause in the will was as follows: "I forgive and release to any person indebted to me all sums owing to me by them except sums as shall be secured to me by mortgages or legal charges." Among the debts owing to the deceased were a debt due from a lady for an advance made to her to start up a nursing home, a debt of £300 due from a company in which the deceased was a shareholder in respect of an advance made in response to a circular, a considerable sum owing to the deceased by his bank in respect of a current account, and certain debts due to a business conducted by him. Farwell, J., held that the last two items did not fall within the clause and were not released. As a matter of common sense, it would be completely absurd to assume that a testator would release moneys due to him on a current or deposit account, small or large. With regard to the debts due to the business this was equally absurd, particularly in view of the fact that the will provided that the business should be carried on. The learned Judge then held that the other two debts were released. It was obvious that the debt due from the friend to start a nursing home was included but he also held that the debt of £300 due from the company was released. In so holding he distinguished *Re Neville*, [1925] Ch. 44, where the clause read: "I forgive all debts owing to me." In that case Tomlin, J., held that the use of the word "forgive" operated to restrict the meaning of the term "debts" and introduced a personal

note. In the case here noted Farwell, J., pointed out that the words "forgive and release" must be regarded as having a wider connotation and that the personal note was not present and consequently purely business debts, such as the debt due from the company, must be included.

It is to be noted that the debts due to the business carried on by the testator were excluded from the release partly, at least, on the ground that the will contained express directions concerning the carrying on of the business. Had the will not contained any such directions it is not equally clear what would have been the result.

As a consequence of this decision and read in the light of *Re Neville* (*supra*) a draftsman will take care, when inserting a clause designed to release debts, to ascertain precisely the character of the liabilities contemplated by the testator. In most cases there will be the usual friendly loans which it is not desired to insist upon being repaid. In such circumstances clearly the word "forgive" will be sufficient and should remain alone. It may, however, be convenient to add some delimiting words to the description debts, but obviously this must depend upon the precise circumstances of the case. As far as possible it is thought that the clause should not be employed at all, and to meet emergencies, if they are likely to arise, at least in some cases a power to release debts in their discretion can be given to the personal representatives, who would of course follow any written instructions of the testator not incorporated in the will.

Will—secret trust.—Re Keen's Estate, [1937] 1 Ch. 326, adds another authority to the difficult problems of secret trusts in relation to wills. Clause 5 of the deceased's will bequeathed a legacy to his executors "to be held upon trust and disposed of by them among such person, persons or charities as may be notified by me to them or either of them during my lifetime" with a direction of lapse into residue on failure to make notification. At the date of the execution of his will the testator handed a sealed envelope to one of the executors addressed to the executors containing the name and address of the proposed beneficiary. The executor was not told of the contents of the envelope, but he understood it to refer to the bequest. The judgment of the Court of Appeal was read by Lord Wright, M.R. He held first that the envelope did contain the necessary details of the trust (overruling Farwell, J., on this point), and secondly that communication to

one of the two executors was sufficient. Had the matter rested there it would appear that there would have been a valid trust, and the decision may be of importance in determining the validity of other secret trusts, but the decision concerning notification may be affected by the precise terms of the bequest, while it is thought that where notification occurs at or before the execution of the trust this would be the case : see *Re Stead*, [1900] 1 Ch. 237.

In the case noted, however, the learned Master of the Rolls went on to point out that the bequest was so framed as to include notifications made after the execution of the will. This, in the opinion of the Court, rendered the beneficial bequest invalid as an attempt to evade the Wills Act, 1837, s. 9. It is true that the construction put upon this clause was that it related only to a notification made after the execution of the will and consequently the precise notification would seem to be inconsistent with the clause, but the reasoning of the Court appears to apply to any clause which included the possibility of notification after the execution.

A clear distinction was drawn between the case of a legacy expressed to be given to the legatees absolutely followed by an agreement by the executors to hold on trust by which they would be bound under the equitable principles laid down in *McConnide* v. *Grogan*, L. R. 4 H. L. 82, and applied in *Re Stead* (*supra*), and a legacy expressed to be held on trust of which the limitations were to be separately communicated to the legatees.

It is thought that in this and like cases it was probably the intention of the testator to avoid the publicity naturally attaching to the publication of the will with regard to the particular beneficiary. It equally seems probable that such cases are bound to arise in practice and this decision places a considerable obstacle in the way of such testamentary benefactions. If the clause in the will refers only to a communication in writing made prior to the execution of the will, it would seem to be sufficiently indicated to become a testamentary document and provable with the will : cp. *University College of N. Wales* v. *Taylor*, [1908] P. 140. On the other hand, if the legacy is made to the intended trustees beneficially by will it is difficult to regularise any agreement to hold upon the intended trusts, though here it may be possible to avoid any disclosure by way of probate. Practitioners will, therefore, have to explain these difficulties to their clients and leave them to decide upon the most appropriate circumstances to meet their need. Clauses to cover separately disclosed trusts appear to have become increasingly common in collections of precedents, but it is apparent that they must be handled with great care.

Additional personal representative during minority.—Attention may be called in this place to the article in the Law Journal (vol. 83, p. 319, May 8, 1937) concerning the principles which will guide the Court in determining whether an application should be granted under the Judicature Act, 1925, s. 160 (2) and N. C. Probate Rules, 1925, r. 115. In this case, *Re Mears*, there was a sole surviving executor of a large estate, and one of three beneficiaries of full age, having life interests, wished to have one or more of the other beneficiaries and another professional gentleman appointed as additional personal representatives. There was no suggestion of incompetence or lack of integrity on the part of the surviving personal representative and neither he nor the other beneficiaries of full age were willing that such additional personal representatives should be appointed. The President held, however, that these facts did not debar him from making an order for such appointment, though the matter was referred back for the parties to agree upon the actual appointment.

Will—accumulations—Saunders *v.* Vautier *rule.—Re Blake's Estate* (1937), 53 T. L. R. 411, is of interest both on the length of time for which accumulations may be directed and on the right to determine the accumulations prior to the appointed date. A testator gave the whole of his residuary estate upon trust to pay certain annuities, some of which were for the benefit of human beneficiaries and others in favour of certain charitable institutions, and on the death of the last surviving human annuitant the residue was to pass to a charity. He further directed that so long as any annuitant was alive any surplus income from the trust fund was to be accumulated but that any deficiency in any one year might be made up out of the surplus income from any other year. The charity entitled to the residue sought (*inter alia*) to determine the direction to accumulate. This application was refused by Bennett, J., whose decision was upheld on appeal. Farwell, J., who read the judgment of the Court of Appeal, said that *prima facie* where residue was given subject to annuities the annuities were charged upon the residue and held that this principle applied in the present case. Further, that the direction to make up deficiencies out of surplus "income in any one year" was not confined to future years, but could apply also to past years. The learned Judge then held that as the accumulation was directed to last during the lives of all the annuitants it was void for excess under the Law of Property Act, 1925, s. 164, and could be accumu-

lated only for twenty-one years from the testator's death. At the expiration of twenty-one years from the testator's death, if any annuitant survived so long, surplus income passed as under an intestacy being undisposed of by the will. Since, therefore, there was a possibility that the income might pass to other parties the Court of Appeal refused to permit the direction to accumulate as it might prejudice such parties, following and approving *Re Deloitte*, [1926] Ch. 56. The Court, however, pointed out that there was a further difficulty in making the order asked in that the residue was given upon charitable trusts and that there was no power to vary those trusts by treating as income that which was by the trust to be capital or *vice versa*, though it would appear that the Court would have power to sanction such a variation.

---

2. *LANDLORD AND TENANT CASES.*

By LIONEL A. BLUNDELL, LL.M., Barrister-at-Law.

Deduction of Schedule A tax from rent — Jurisdiction of the Court ousted by that of the General Commissioners.—Rule 22 of the General Rules applicable to all Schedules to the Income Tax Act, 1918, provides that if a difference arises between tenant and landlord or any other persons with regard to the deduction on account of tax to be made from any annual sum, the General Commissioners of the division shall settle the proportion of the payments or deductions to be made, and their determination is to be final. In *Ecclesiastical Commissioners for England* v. *Sackville Estates, Ltd.* (1937), 53 T. L. R. 702, the lessees of premises which were sub-let to numerous tenants obtained relief from tax under Schedule A in respect of periods when some of the tenements were vacant: Finance Act, 1930, s. 21. They deducted from the rent, however, the tax on the whole of the ground rent payable under the lease. Upon the lessors objecting to this, the lessees referred the difference to the General Commissioners, under rule 22, who decided that the lessees were entitled to make the deduction which they had made. In an action by the lessors for rent due, less tax on the reduced assessment obtained by the lessees by virtue of section 21, it was held by Lawrence, J., that under rule 22 the jurisdiction of the Court on the question was ousted. Lawrence, J., did not therefore express any opinion as to whether he considered the decision of the General Commissioners to be correct, as there is no appeal from their ruling.

Rent Restriction Acts—whether section 2 of the 1933 Act can recontrol a house already decontrolled under the 1923 Act.—In *Brooks* v. *Brimecome*, [1937] 2 All E. R. 637, the Court of Appeal decided that section 2 (1) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, does not have the effect, as had been suggested, of recontrolling a "Class C" dwelling-house which, having been decontrolled by the landlord obtaining actual possession prior to the passing of the 1933 Act, has been subsequently re-let to a tenant.

A "Class C" house (its rateable value not exceeding £13 on April 1, 1931, the house being situate outside London) was in the owner's occupation when the 1933 Act was passed, having been decontrolled under section 2 of the 1923 Act. The house was subsequently let to a tenant, who contended that it was a controlled house.

Section 2 (1) of the 1933 Act provides that subject as thereinafter provided section 2 of the Act of 1923 "shall not apply to any dwelling-house of which the rateable value on the appointed day did not exceed" the figures specified, £20 in London, £26 5s. in Scotland, and £13 elsewhere. The provision which follows relates to the sub-letting of part of a dwelling-house, and does not affect the point under discussion.

The County Court Judge held that this section was retrospective in effect, so that after the passing of the 1933 Act the house could no longer be said to be within section 2 of the Act of 1923, and thus it would revert to control. The Court of Appeal rejected this view. Slesser, L.J., pointed out that the section must be read in the light of section 16 of the 1933 Act, which defines a "dwelling-house" as a house let as a separate dwelling or a part of a house being a part so let. This house was not let at the time of the passing of the 1933 Act, and so was not a dwelling-house within the meaning of the Act. Section 2 (1) could not therefore apply to the house, because that enactment relates only to dwelling-houses as defined. Section 2 of the 1923 Act would thus remain operative with regard to the house, and the house would remain decontrolled.

It may, however, be suggested that although not a dwelling-house within the meaning of the Act at the time of the passing of the 1933 Act, the house did become such a "dwelling-house" when it was re-let, so that as from that date section 2 (1) of the 1933 Act would commence to apply to the house. For this reason the second ground of decision stated by the Court of Appeal (the one favoured by du Parcq, J., sitting in that Court) may be preferred. That ground is that section 2 (1) is not in any event retrospective. Moreover, placing the decision upon this wider ground, its effect is more

far-reaching. If the house had been re-let before the passing of the 1933 Act, it would have been a dwelling-house as defined at the time of the passing of that Act, but since the section is not retrospective in its effect the decontrol previously acquired would have been retained and the house would not be re-controlled.

It is thought, however, that the decision of the Court of Appeal could have been placed upon an even wider and simpler ground than either of the two mentioned in the judgments. By section 1 (2) of the 1933 Act it is enacted that as from September 29, 1933, the principal Acts shall not apply to any dwelling-house unless it is a dwelling-house to which they applied immediately before the passing of that Act. Apart from the question of the meaning of the term "dwelling-house", and apart from the question of retrospective action, it is perfectly clear that a house which had become decontrolled under the provisions of the 1923 Act was not a house to which the principal Acts applied immediately before the passing of the 1933 Act. Therefore, by the very words of the 1933 Act, the principal Acts do not apply to the house. Section 1 (2) of the 1933 Act is an over-riding provision of law, defining what houses remain subject to the control of the Rent Acts after the passing of the 1933 Act, and the relationship of landlord and tenant is restored to all cases where it cannot be shown affirmatively by the tenant that all the requirements of that sub-section have been complied with. See *White* v. *Bembridge*, [1935] 1 K. B. 244; 104 L. J. K. B. 256, C. A.; *Heginbottom* v. *Watts*, [1936] 2 K. B. 6; 105 L. J. K. B. 337, C. A.

It is important to distinguish carefully the case of *Stokes* v. *Little*, [1935] 1 K. B. 182; 104 L. J. K. B. 38, C. A., referred to in the judgments in *Brooks* v. *Brimecome*. The question of the possible retrospective action of section 2 (1) was mentioned in that case, but not decided. *Stokes* v. *Little* was concerned with the effect of registering a house as decontrolled under section 2 (2) of the 1933 Act, where application for registration is made out of time upon obtaining a certificate of reasonable excuse for the failure to make the application within the three months specified. It was held that the effect was to place the house, as from the date of the application, in the same position as though it had been registered within the three months. That is entirely a different point from that which arose in *Brooks* v. *Brimecome*, and the two cases must be distinguished. A consideration of section 2 (2) does, however, show that the view of the County Court Judge in *Brooks* v. *Brimecome* really could not be correct. If section 2 (1) actually did operate retrospectively, there would be no "Class C" dwelling-houses remaining decontrolled by virtue of section 2 of the 1923

Act, and the following sub-section dealing with registration would be meaningless because there would be no dwelling-houses to which it could apply.

---

3. *INCOME TAX CASES.*

By L. J. Stein, Barrister-at-Law.

[Note.—The decisions selected for notice are not necessarily those of the greatest importance from the standpoint of the income tax practitioner but those most germane to the matters with which *The Conveyancer* is primarily concerned.]

Husband's liability in respect of wife's income.—Measure of liability.—By the first proviso to Rule 16 of the All Schedules Rules, "the profits of a married woman living with her husband shall be deemed the profits of the husband and shall be assessed and charged in his name". Commenting on this part of Rule 16 in *Leitch* v. *Emmott*, 14 T. C. 633, Lawrence, L.J., pointed out that "the proviso does not alter the *character of the income* charged to tax or *the measure of the tax*, but merely provides, with the object of facilitating *the collection of the tax*, that the assessment and charge shall be made in the name of the husband". This principle was applied by Lawrence, J., in *Elmhirst* v. *C. I. R.*, [1937] All E. R. 349, in the following circumstances. For certain years of assessment a husband was liable to tax in respect of his wife's income from foreign investments. But a question arose as to how that liability was to be quantified, or, in other words, as to what was to be taken to be the statutory income from that source. Was the statutory income to be computed by reference to the wife's income from the foreign investments in preceding years in which she was both (a) unmarried, and also (b) non-resident and consequently not taxable in respect of foreign income? It was held that the answer was in the affirmative. As to bringing into the computation the income of years in which the wife was non-resident, the point was not a new one and was covered by the principle applied in *Back* v. *Whitlock*, 16 T. C. 723, *viz.*, that the taxpayer's income from a given source in years in which he was not chargeable may be brought into the computation of his statutory income for a year in which he *is* chargeable. As to bringing

in years in which the lady was unmarried, the judgments in the Court of Appeal in *Leitch* v. *Emmott*, above, show that the first proviso to Rule 16 does not for all purposes transform the wife's income into the husband's income; the wife's income must first be determined, and that income is then aggregated with the husband's income and the joint income taxed as a whole in the name of the husband. That being so, there was (it was held) no reason why the wife's income should not be measured in the ordinary way, even though this would result in the *quantum* of the husband's liability being determined by reference to the wife's income in years preceding the marriage.

Liability of husband's executor in respect of wife's income.—*Leitch* v. *Emmott*, which has been referred to in the preceding note, was considered in another context in *Palmer* v. *Cattermole*, *The Times* newspaper, April 20, 1937. A husband and wife had been living together within the meaning of the first proviso to Rule 16 of the All Schedules Rules. The husband died during the tax year 1931-32, and his executrix became assessable, under Rule 18, in respect of "the profits or gains which arose or accrued to him before his death". It was pointed out, on behalf of the executrix, that the words of Rule 18 are "which arose or accrued to *him*", *i.e.*, the deceased, and it was contended that, having regard to the interpretation placed on Rule 16 in *Leitch* v. *Emmott*, above, income arising to the wife while the spouses were living together could not, for the purposes of Rule 18, be regarded as income arising to the husband. This contention was rejected by Lawrence, J., on the ground that what was decided in *Leitch* v. *Emmott* was that the wife's income did not, by virtue of Rule 16, fall to be treated as the husband's income for purposes of *computation*. What was here involved was not a question of computation but a question of assesment and collection. Rule 18 was really a machinery section, and there was no reason why it should not be liberally interpreted so as to result, in conjunction with Rule 16, in making the executrix assessable in respect of the whole of the income (including income arising to the wife) which the husband could have been required to include in his return.

Apart from the question as to the inclusion of the wife's income, it was also contended that Rule 18 made the executrix liable only in respect of income arising during the year of assessment in which the deceased died. This contention also failed. The words of Rule 18 "which arose or accrued to him before his death" are

quite general, and there is nothing to suggest a limitation to the last year of assessment.

Payment on account of deceased partner's interest.—Income or capital?—A question which, in one form or another, has formed the subject of a long chain of decisions, and which was recently discussed in *C. I. R.* v. *Ramsay*, 20 T. C. 79, and *Dott* v. *Brown*, 15 A. T. C. 147, arose once more in *C. I. R.* v. *Ledgard*, 16 A. T. C. 63. A partnership deed provided that on the death of a partner the purchase-money to be paid for his share by the surviving partners should, failing agreement, be "a sum equal to one half of the share of profits for three years commencing from the first day of the month immediately following the death of such partner had he continued to be a partner during the said period of three years". It was further provided that the surviving partners should be under no obligation to make any payments on account until the amount of the purchase-money should have been actually ascertained. One of the partners having died, and the amount payable by the surviving partners not having been fixed by agreement, the provisions set forth above took effect. What actually happened was that sums equal to half of the deceased partner's share of profits for each of two successive accounting periods were paid under deduction of tax by the surviving partners, who then proceeded to contend that their respective shares of the sums so paid fell to be treated as annual payments deductible from their respective total incomes for surtax purposes.

Reversing the decision of the Special Commissioners, Lawrence, J., rejected this contention and held that the payments in question were of the nature of capital and not of revenue payments. The effect of the partnership deed, correctly construed, was not that the purchase-money should take the form of a series of annual payments out of the profits; the purchase-money was to be a single sum to be quantified in a prescribed manner. It was not conclusive in favour of the surviving partners that that sum was not quantified in advance nor that it was to be quantified by reference to profits—see on the first point the observations of Scott, L.J., in *Dott* v. *Brown*, above, and on the second point the principles propounded by Lord Buckmaster in the *Glenboig Case*, 12 T. C. 463. What was payable was a lump sum to be ascertained at the end of the three years, and if the surviving partners elected to make payments on account, the payments so made were none the less payments on account of a capital sum.

4. *DEATH DUTY CASES.*

By L. J. STEIN, Barrister-at-Law.

Estate duty—passing on determination of discretionary trust.—The question which arose for decision on the somewhat complicated facts of *Scott* v. *C. I. R.* (1936), 15 A. T. C. 591, can be briefly stated as follows. X had a contingent life interest in certain settled estates. He sold his interest to his father, Y, who settled it on certain trusts. X's contingent interest subsequently became an interest in possession, and Y's settlement took effect. In the events which happened, the trusts of that settlement took the form of (a) a trust to apply the income to the payment of certain annual charges, and, subject thereto, (b) a discretionary trust for the benefit of X, his wife, children and remoter issue, surplus income to be accumulated and the accumulations to be applied at the discretion of the trustees towards the discharge of incumbrances. Z was a son of X and, as such, one of the objects of the discretionary trust. At X's death, Z became, under the main settlement, tenant in tail male in possession of the estates.

On these facts, the House of Lords, affirming the judgments of the Courts below, held that on the death of X there was a true passing of the settled property under section 1 of the Finance Act, 1894. True, Z, who at X's death became entitled to the whole income of the property, was immediately before the death one of the objects of the discretionary trust of the same income. But immediately before the death of X the persons beneficially interested in the income of the property were the objects of the discretionary trusts and the persons who might ultimately benefit by the accumulations and discharge of incumbrances; immediately after the death of X, the beneficial enjoyment of the income was vested exclusively in Z. It made no difference that Z was himself one of the objects of the discretionary trust. Z had under the discretionary trust no interest in or title to any defined part of the property or its income, but on the death of X the discretionary trust came to an end, and by virtue of the main settlement X became entitled in possession to the whole income of the property, so that there could properly be said to be a change of hands in the beneficial title to the property as a whole.

Another aspect of the same question was considered by the House of Lords in *Burrell* v. *Att.-Gen.* (1936), 15 A. T. C. 605. The effect of the trusts declared by a will drawn in a somewhat unusual form was, shortly stated, that at the death of X the income of certain property became subject to a discretionary trust in favour

of a group of persons answering to a certain description, whereas immediately before the death it had been subject to a similar trust in favour of a group of persons answering to a different description. There was some over-lapping between the members of the two groups. The House of Lords rejected the contention that the objects of a discretionary trust, even regarded as a class, have no beneficial interest in the trust property, so that a change in the identity of the objects of the discretionary trust occurring on the death could not represent a passing of any beneficial interest and there could, therefore, be no question of a passing under section 1. It was further contended that, even if the objects of a discretionary trust *could* be said to have a beneficial interest in the trust property, there was in this case an over-lapping between the objects of the trusts in force respectively before and after the death, so that a passing under section 1 was in any case excluded, since in these circumstances it was impossible to say that on the death the property as a whole changed hands. This contention also was rejected. The gist of the decision is to be found in the following passage from the speech of Lord Russell of Killowen :—

> "If there is a trust during A's life of the income of a property for a group of persons fulfilling certain qualifications, the persons who are to share from time to time and the amounts which they respectively take being in the discretion of the trustees, followed on A's death by a similar discretionary trust during B's life of the income of the property for a group of persons fulfilling different qualifications, I would say that the title to the beneficial interest in the property as a whole changed hands on the death of A and passed on his death under section 1; and that notwithstanding that one or more persons fulfilled both sets of qualifications."

It will be seen that what was decided was, first, that the objects of the discretionary trusts had, regarded collectively, a beneficial interest in the trust property, and, secondly, that the mere fact that certain persons were objects of both the discretionary trusts did not prevent the beneficial interest in the property as a whole from changing hands on the death. But it is not, of course, to be inferred that if A, B, C and D are objects of a discretionary trust and A dies, there can be said to be on A's death a passing under section 1, on the ground that there is a passing of the beneficial interest in the property as a whole from a class consisting of A, B, C and D to a class consisting of B, C and D. It was an essential feature of the case that, though certain individuals happened to be members of both groups, the two groups were constituted under two distinct trusts prescribing different qualifications.

Estate duty—accumulations.—In *Att.-Gen.* v. *Lloyds Bank*, [1935] A. C. 382, it was conceded on behalf of the Crown (see report of the hearing in the King's Bench Division, 12 A. T. C. 369, at p. 372) that where in the case of a trust for accumulation under a settlement the settlor has parted with all beneficial interest in the property before the accumulations began, the accumulations must be regarded as property in which the settlor never had an interest, so that for the purposes of any estate duty which may be leviable in respect of the settled property the amount of the accumulations must be excluded from aggregation and treated as an estate by itself under the proviso to section 4 of the 1894 Act. It would seem, however, that (though no such intimation appears in the reports) it was in fact subsequently intimated that "the admission would be allowed to stand for the purpose of the particular case only" (see *Green on Death Duties*, at p. 160). The point has now arisen for decision in *Att.-Gen.* v. *Dickinson*, [1937] A. E. R. 485, where it was held by Lawrence, J., that the accumulations must, in such circumstances, be aggregated. The principle on which the decision was based was that "the fruits of property are so far inherent in the property that the owner of the property has, by virtue of his ownership, a beneficial interest in the fruits of the property", and that in disposing of his property he is disposing of its capacity to produce fruits. Hence, it could not be said that the settlor had never had an interest, within the meaning of the proviso to section 4, in the future income of the settled property, notwithstanding that the accumulations represented income which in fact arose after the settlor had transferred the property to the trustees.

CONVEYANCER'S NOTEBOOK.

Report of the Chief Land Registrar, 1936.—The Annual Report of the Chief Land Registrar presented to the Lord Chancellor (published by H.M. Stationery Office, price 6d.) deserves more attention from practitioners than it usually appears to receive. Since the writer of this notice for the first time has had occasion to criticise certain aspects of the Land Registration Act and the claims made for it, he would like first to pay a humble tribute to the remarkable efficiency of the organisation of the Registry in the face of very rapid expansion. He would add from personal

experience that this efficiency is coupled with great courtesy and helpfulness to practitioners on the part of the officials. In fact one is led to say that the best advertisement for registration of title is the Registry itself.

The most striking fact of the Report is the rapid growth of registered titles and the Report contains most instructive tables. In the last year, before compulsory registration in Middlesex took effect, the number of first registrations of titles in compulsory areas totalled roughly 5,500, while in non-compulsory areas it was practically 5,000; but the dealings in compulsory areas numbered approximately 96,350, while in non-compulsory areas they were no less than 134,200. No doubt this is due in part to the fact that new titles in the non-compulsory areas are frequently intended to be split up as building estates and consequently the number of dealings compared with first registrations is greater in proportion, but it also means that the actual number of titles (as distinct from first registrations) must be rapidly increasing in non-compulsory areas. This is indicated by the fact that in the analysis of dealings it appears that in the compulsory areas there were only a little over 2,000 dealings with part of the land, while there were nearer 28,000 transfers of part in the rest of England. At the same time the bulk of the first registrations come from the Home Counties. The advantages of registration do not appear yet to have been appreciated to the same extent in other parts of England.

What is still more remarkable than the relation between the figures in the compulsory and non-compulsory areas during the year is the comparative table of increases in the non-compulsory areas. Since 1932 the number of first registrations has doubled and since 1913 it is fourteen times as many.

It is thought that the Chief Land Registrar looking at these figures may say that the system of registered conveyancing has proved itself and that it is a matter of time only before that system must become universal. Naturally practitioners with little or no experience of registered conveyancing are shy of an innovation that means that after the flood of the Property legislation will come the deluge of registered conveyancing. It cannot be denied that registered conveyancing has a technique of its own and a substantive law which has not yet received adequate attention at the hands of the writers of text-books and precedents, and it is with this in mind that it is hoped in this Journal to pay increasing attention to the subject of registered conveyancing, both with detailed articles, such as those in the current number, dealing with special points, and with more general articles concerned with a rather more elementary survey of the principles and practice.

Apart from the figures of registrations and dealings the most instructive part of the Report deals with the steady decrease in the time taken for first registrations coupled with a decline in the cost of registration. The Chief Land Registrar has occasion to pride himself that the fees for registration have twice been reduced during the last eleven years and that absolute titles are now being granted at below half the cost of possessory titles in 1920.

The Report also contains statements concerning the work of the Land Charges Department, the Middlesex Deeds Registry and the Agricultural Credits Department, and a financial statement. These have hardly the significance of the report on the work of the Land Registry Department, but they all testify to the same care and efficiency and may surprise some not aware of the great mass of work which passes under the supervision of the Registrar. The Land Registry is a great institution and manifestly it is bound to prosper.

Although the editors of *The Conveyancer* cannot undertake to give personal advice on matters of difficulty in conveyancing they welcome inquiries that may be of general interest to readers and which may be raised in these columns. A correspondent raises a matter that may have interest for many conveyancing practitioners, which, put shortly, is as follows. A builder, who sells workmen's dwellings occasionally to single workmen, finds that, though reliable purchasers, they often cannot find a deposit sufficiently large to secure a mortgage. He suggests that instead of trying to find a mortgage he should register a contract to pay instalments as a land charge and then make the conveyance on payment of the full price. Such a contract might endure for twenty years, and he wonders whether the proposition is one which is practically feasible.

The possibility of registering a contract as a land charge has undoubtedly made a substantial difference in the legal position of both vendor and purchaser under a contract. Equitable interests capable of registration under the Land Charges Act have acquired substantially many of the characteristics of legal interests, though the remedies for enforcing rights may remain in some respects markedly different. It is thought, however, that any such device as that suggested, which is certainly attractive in some respects, would require careful consideration. In particular, mention may be made of the problems of possession, non-payment of instalments, and assignment.

No doubt as against the vendor the purchaser would be entitled to possession, if this were particularly provided for by the contract,

but in the absence of a legal title the purchaser might have difficulty if he let the property: cf. *Schalit* v. *Nadler*, [1933] 2 K. B. 79. The fact that the right to possession would under the contract constitute primarily only a licence would probably be very little material, apart from the point made, in view of *Hurst* v. *Picture Theatres*, [1915] 1 K. B. 1, but it remains doubtful whether the right would be enforceable against any purchaser from the vendor of the freehold subject to the contract.

In respect of non-payment of instalments the contract would have clearly to provide for the rescission of the contract and where many instalments had been paid some sort of compensation to the purchaser similar to his rights against a mortgagee who realises his security.

Assignment both by vendor and purchaser, whether *inter vivos* or by death, also presents some difficulties. These appear primarily to be concerned rather with practice than with theory, though it cannot be emphasised too firmly that a contract creates primarily a right *in personam* and not a right *in rem*. Dealings by a purchaser would be governed by the rules for the assignment of contracts and the vendor's assigns would be subjected principally to the rules controlling the action of specific performance subject to express contractual provision regarding the payment of instalments and user of the property.

Our view at the moment is not very favourable to the device as too complicated both in theory and practice, but we should welcome the views of readers.

THE LIBRARY.

PROPERTY LAW AND ECCLESIASTICAL LAW.

THE LAW RELATING TO THE CHURCH AND CLERGY. By HENRY WILLIAM CRIPPS, Q.C., M.A. Eight edition by KENNETH M. MACMORRAN, K.C., M.A., LL.B. London: Sweet & Maxwell, Ltd. 1937. pp. lxiii + 637. Price 30s.

Ecclesiastical law tends to be looked upon as the exclusive province of a small and doubtless select body of practitioners whose practical lives are bound up with the problems of illegal ornaments and disputes of an arid character divorced from the life of the ordinary world. In fact, however, a large body of ecclesiastical

law is concerned with the law of property not only associated with clerics but with laymen as well. It is one of the peculiarities derived from the Establishment that it affects a number of aspects of English law; so for most people it governs the law relating to burial places and the erection of memorials, and the method and validity of marriage. Tithe again affects a very large percentage of landholders, and ecclesiastical corporations may be large landholders themselves whose authority of disposition, including leasing, is governed by statute. There is still a great deal of patronage in lay hands and it is capable of being alienated, subject to certain restrictions, for valuable consideration.

For these reasons alone ecclesiastical law cannot be disregarded by the practitioner, who can never be sure when his client may not be affected by branches of the law already indicated or may wish to apply for a faculty for the erection of a monument in a church or churchyard, to mention no other matters, and assuming that he does not number among his clients any clerics. What is more, since the last edition of this work in 1921, the new legislative body of the Church, the Church Assembly, has been very busy in producing enactments many of which directly affect some of the matters mentioned above, and of course Parliament itself has also taken a hand, as witness the Tithe Acts, 1925—1936, and the Marriage Acts, 1929 and 1934, to mention only two.

This new edition takes account of all the many changes thus introduced by legislation and the fact that they occupy seven out of the twenty-three pages of the Table of Statutes testifies to their extent. The learned editor, however, has not been content simply with the incorporation of new matter. The work has been thoroughly revised in the course of which there has been considerable rearrangement, and despite the addition of so much extra material the learned editor has managed by skilful "pruning" actually to reduce the size of the book by some fifty pages. To the curious it may be a matter of regret that he has seen fit to delete, or to relegate to a footnote, some of the archaicisms like the opinions of former divines, as, for example, in connection with the relation between Church and State, but this work is a law book and it is thought that in its present form it more than justifies its earlier reputation. It has certainly lost something of the archæological flavour which tends to permeate matters ecclesiastical, but as a straightforward, exact and comprehensive exposition of the law it is a model.

PRECEDENTS

Form 1.

Will of Widower Settling in Strict Settlement His Real Estate in England and Wales for Longest Possible Period: Also Settling His Irish Estate in Strict Settlement.

Drafted by F. E. Farrer, of Lincoln's Inn, one of the Conveyancing Counsel to the Court.

NOTE.—The extraordinary length of settlement here illustrated as to English and Welsh, but not Irish, real estate (L. P. Act, s. 209 (3)), has been rendered possible by the abolition, as regards limitations created after 1925, of the old possibility rule (L. P. Act, s. 161), wherein "instrument" clearly includes a will (s. 205 (ii) (vii)). That rule applied to limitations by way of particular estate and remainder of real estate, including apparently copyholds (*Re Clarke*, [1916] 1 Ch., at p. 478), whether the limitations were legal (Fearne, p. 502 (see the writer's article, L. Q. R., Vol. 51, pp. 674, 675); *Whitby* v. *Mitchell*, 42 Ch. D. 494; 44 Ch. D. 85), or equitable (see the original text of the Touchstone, p. 506; *Re Nash*, [1910] 1 Ch. 1), and to money subject to an imperative trust to lay out in purchase of land (*Whitby* v. *Mitchell*, *supra*); but it did not apply to a subject-matter in which a legal remainder could not exist, *e.g.*, to pure personal estate or a term of years carved out of real estate (*Re Bowles*, [1902] 2 Ch. 650; *Re Clarke*, [1916] 1 Ch. 467, 478); Fearne 401—406.

The rule, sometimes called the possibility rule in order to distinguish it from the modern rule of perpetuity, was a quite separate independent and additional rule (*Whitby* v. *Mitchell*, *supra*, and passages from Fearne, cited in the writer's article, L. Q. R., Vol. 51, pp. 673—675).

The rule may be stated thus. That, though it is perfectly legal to limit after a life estate to A, a bachelor, a life estate to his unborn child for life or tail, yet, the last limitation cannot be followed by an *immediate* remainder without another interposed particular estate to the unborn child of that unborn child, so as to enable the latter to take as purchaser.

In certain cases where the gift was by will, the Courts, to save the situation, applied the doctrine of *cy-près*, giving A's unborn child an estate tail, so as to give a chance of the estate descending to that child's issue: but the phrasing of this Precedent makes it clear that such doctrine could not here apply, apart from the fact that the old possibility rule is abolished.

Had the testator in this case died before August 2, 1877—the date of the Contingent Remainders Act, 1877—inasmuch as the limitations created would then have been *legal*, there would have been this further difficulty, even if the old possibility rule had never existed, *viz.*, that

though D B's child, though both begotten and born after the testator's death, must have taken a valid life estate, for it would have been considered to have been living at the death of its father D B, who took a particular *legal estate*, and so its contingent remainder would have vested at latest at the expiration of that particular estate (*Reeve* v. *Long*, 1 Salk. 227; 10 & 11 Will. 3, c. 16): yet that child's child's life estate, though he were born within "the period" (assuming the modern rule of perpetuity ever applied to a legal contingent remainder), unless indeed he were born in the lifetime of the survivor of the testator's son C B and grandson D B, or at least were *en ventre* at the death of such survivor, would have failed, for his contingent remainder for life would not have vested during or *eo instante* with the expiration of the only particular *estates* in C B and D B: see the writer's article, 51 L. Q. R., pp. 677—680, and the authorities there referred to.

We are thus left to confront the modern rule of perpetuity alone—a rule unquestionably invented to limit the period of vesting in interest of executory limitations first validated by the Statutes of Uses and Devises —but that rule only has reference to vesting *in interest* in due time; it has absolutely nothing whatever to do with the determination of a limitation once validly vested in interest, and consequently with the falling *into actual possession* of a remainder once validly vested in interest on a previous validly vested estate (Lewis, Perpetuity, 173, 511; *Wainewright* v. *Millar*, [1897] 2 Ch., p. 261; *Re Gage*, [1898] 1 Ch. 498; *Re Chardon*, [1928] Ch., p. 468; *Mann* v. *Land Registry*, [1918] 1 Ch., p. 209; Gray, s. 232). If indeed the modern rule of perpetuity had ever applied to a legal contingent remainder (which it is submitted it never did: see author's article, 51 L. Q. R. 668, and decision there stated of *Syme* v. *Syme*, [1896] 1 Ch. 272, the facts of which are stated 51 L. Q. R., at p. 679), this very case would have afforded a good illustration of the above principle. And every one of the limitations in this Precedent must validly vest in interest during "the period", with extra period of gestation where gestation exists as a fact.

Last we may note that if indeed, not by virtue of the mere decision of D. P. in *Reeve* v. *Long*, 1 Salk. 227, yet at all events that by virtue of 10 & 11 Will. 3, c. 16, confirming that decision, the heir male of the body of X B entitled to a life estate under the limitations, though his next predecessor for life dies while such heir male is only *en ventre*, will on his birth take the mesne rents and profits that accrued prior to his actual birth (*Bassett* v. *Bassett*, 3 Atk. 303). But where the *first* taker under limitations in settlement for life or in tail is *en ventre* at testator's death, the limitations are necessarily executory in a sense until he is born, and in that case the interim accrued rents prior to his birth will fall into residuary devise, if any: see Fearne 525, 541, 542, 546 *et seq.*; *Re Mowlem*, 18 Eq. 9; *Rawlins* v. *Rawlins*, 2 Cox 425; 1 Rolle Abr. 609, H. 2; but consider now L. P. A. 1925, s. 175.

F. E. Farrer.

P.S.—The writer himself can see no flaw in this Precedent: but as it is totally new, and its whole basis is the abolition of the Possibility Rule by L. P. Act, s. 161, he would be greatly obliged if any learned correspondent will point out to him any such flaw. New inventions in assurances are doubtless dangerous, but abolition of old rules of law is doubly so.

I, A B of Possibility Hall in the County of Suffolk being domiciled in England DECLARE this to be my last will which I make this —— day of ——.

1. [*Revocation of prior wills.*]

2. I appoint J K of *etc.* L M of *etc.* and N O of *etc.* to be the executors and trustees of this my will and the trustees hereof for the purposes of the Settled Land Act 1925 (*a*) and of the Settled Land Acts 1882 to 1890 and they the survivors or survivor of them or other the trustees or trustee for the time being hereof are hereinafter called "My Trustees".

3. [*Executors' legacies—legacies and annuities to servants —legacies to daughters (if any)—bequest of arrears of rents and profits and of apportionment of current rents and profits and balances in agent's hands* "to my said Trustees" *upon trust for the first successor in his English real estate.*]

4. WHEREAS I am the present heir male of the body of my great great great grandfather X B who died in the year —— and acquired my principal mansion Possibility Hall aforesaid and the nucleus of my estate in England and I am desirous of settling my real estate in England and Wales for the longest period practically allowable to me and also of so settling my real estate in Ireland Now—

(A) I declare that the expression "the period" when hereinafter used means the period of time coinciding with the life of the longest liver of the following persons that is to say my only son Charles B and his only son living at the date of execution of this my will namely Daniell B and all the descendants of His late Majesty King George V (*a*) and His Consort Her Majesty Queen Mary who shall be living at my death or being then

(*a*) The Settled Land Act, 1925, does not apply to Ireland: s. 120 (3). The number of lives that may be selected as to form part of the period allowed by the modern perpetuity rule is limited only to the number as to which testimony can be adduced as to when they drop (*Thelusson* v. *Woodford*, 11 Ves., p. 146). Thus a testator dying in 1926 could validly select all the descendants of Queen Victoria living at his death, which in 1922 numbered above 120 (*Re Villar*, [1929] 1 Ch. 243). A trust out of income to keep a tomb in repair for the lives of all persons living at "my death" is void for uncertainty (*Re Moore*, [1901] 1 Ch. 936; *Re Villar*, [1929] 1 Ch., p. 251). The lives need not have any beneficial interest (*Thelusson* v. *Woodford*, 4 Ves. 227; 11 Ves. 112; *Cadell* v. *Palmer*, 1 Cl. & F. 372; Lewis 161; *Re Villar*, [1929] 1 Ch. 243).

in ventre (*b*) shall be born in due time after my death and with a term of twenty-one years from the day next preceding the day of the death of such longest liver as aforesaid

(B) I devise all my real property situate being or arising in England or Wales (hereinafter called "my English real estate") to the use of my said son Charles B during his life with remainder to the use of my said grandson Daniell B during his life with remainders [subject (*c*) nevertheless and without prejudice to any exercise of the power of appointment hereinafter conferred on my Trustees which power shall have priority over such remainders] as follow namely to the use of the person born during "the period" or in ventre (*d*) at the expiration of "the period" but born in due time after such expiration who shall for the time being and from time to time (*e*) be the heir male of the body of my said great great great grandfather X B and so that no such person shall take under the foregoing limitations a beneficial interest exceeding an interest for his life and so that every life estate hereinbefore limited shall be without impeachment of waste WITH remainder to the use of that particular individual in tail male who under the foregoing limitations shall take the last effective life interest in possession (*f*) WITH remainder to

---

(*b*) A person *en ventre* at the time of the instrument becoming operative, but born in due time afterwards, is for the purpose of the rule of perpetuity in being at the time of the instrument becoming operative, either where, as here, such holding is indifferent as regards benefit of such person (*Thelusson* v. *Woodford*, *supra*), or though it be to his direct disadvantage so to hold (*Re Wilmer's Trusts*, [1903] 1 Ch. 874; 2 Ch. 411; *Villar* v. *Gilbey*, [1907] A. C., at pp. 144, 149).

(*c*) These words in square brackets to be inserted only if the power of appointment given at the end is inserted.

(*d*) Where a person beneficially interested is *en ventre* at the expiration of the period allowed by the perpetuity rule, and is born after the expiration, the extra period of gestation is allowed for the vesting in interest of his estate: *Thelusson* v. *Woodford*, 11 Ves., at p. 149; *Cadell* v. *Palmer*, 1 Cl. & F., at pp. 421, 423; Lewis 147; Gray, ss. 220—222; *Villar* v. *Gilbey*, [1907] A. C., at p. 149.

(*e*) These words make it clear that the person above referred to is not a single person, but a succession of persons from time to time answering the description of heir male of the body of testator's ancestor X B. See *Re Mountgarret*, [1919] 2 Ch., at p. 302.

(*f*) The object of this clause is to make the first estate tail in order of limitation contingent till the last possible moment. Were it not for

the use of the heirs male of the body of my said great great great grandfather X B (*g*).

5. [*Settlement of furniture, etc., in or appropriated to Possibility Hall,* " hereinafter called ' my English heirlooms ' " *to go as heirlooms with* " my English real estate ".]

6. [*Powers of jointuring and charging portions strictly limited in succession only to Charles B and Daniell B.*]

7. I devise all my real estate situate arising or being in Ireland (*h*) (hereinafter called " my Irish real estate ") to the use of the said Charles B during his life without impeachment of waste with remainder to the use of the said Daniell B during his life without impeachment of waste with remainder to the use of the first and other sons of the said Daniell B successively according to seniority in tail male with remainder to the use of the first and other sons born after the date of execution of this my will of the said Charles B successively according to seniority in tail male [*Follow up with limitations according to the old law: the L. P. Act, s.* 161, *not applying to Ireland*].

8. [*Settlement of chattels in or appropriated to Irish principal mansion-house (if any) as heirlooms to go with that house according to old forms.*]

9. [*Bequest of Irish leaseholds for lives and years and chattels real* " (hereinafter called ' my Irish chattel real estate ') " *to trustees upon trusts corresponding to uses of Irish real estate—old forms.*]

---

this interposition, then were Charles the son to survive his father, he, being then heir male of the body of testator's ancestor X B, could by virtue of the next limitation immediately and effectively bar the estate tail, subject to the intervening life limitations. The life interest of the last taker will of course merge in his remainder in tail male from the moment that it is ascertained that there can be no further life interest.

(*g*) This ultimate limitation confers the peculiar estate tail illustrated by *Mandeville's Case*, Co. Litt. 26 b, discussed in Fearne, 80—82, and *Re Mountgarret*, [1919] 2 Ch. 294, and authorities cited in the latter case—and referred to in L. P. Act, 1925, s. 132.

This would make the son surviving his father, or the grandson D B surviving his father and grandfather, tenant in tail male by purchase; but were such tenant by purchase to fail of an heir male of his own body, then the land would go, as if it had been originally limited, to X B, the testator's ancestor himself in tail male.

(*h*) The L. P. Act, s. 161, applies to England and Wales only: s. 209 (3).

10. I devise and bequeath all my undivided shares (if any) in real estate or in leasehold or chattel real estate situate being or arising in England and Wales and the money to arise from sale thereof and all my leasehold or chattel real estate so situate being or arising and all my personal estate (*hh*) not hereby or by codicil hereto otherwise disposed of to my said Trustees upon trust that my Trustees shall sell and convert the same into money with power at discretion to postpone such sale and conversion and so that reversionary interests be not sold till they fall into possession unless my Trustees see special reason for earlier sale and so that rents profits and income of such leasehold or chattel real estate or shares therein and of my personal estate howsoever invested do as from my death go as income and so that my Trustees do have over or in relation to such my leasehold or chattel real estates or shares therein for the time being remaining unsold all such powers and other discretions and rights as are for the time being and from time to time conferred on trustees for sale by law or by statute (*i*) And I direct my Trustees out of the proceeds of such sale and conversion and my ready money to pay my funeral and testamentary expenses and debts (except mortgage debts) and to pay or provide for the legacies and annuities hereby or by any codicil hereto given and the duty on any such as are given free of duty and subject to the above payments and provisions to pay the estate duty arising as at my death in respect of my English real estate and to hold the balance of such moneys (hereinafter called "my residuary estate") upon the trusts and with and subject to the powers and provisions that would be applicable thereto were the same capital moneys arising from a sale made under the provisions of the Settled Land Act, 1925 after my death of some part of my

---

(*hh*) The testator is *supra* domiciled in England, hence he can give his personal estate—though comprising Irish stocks—in this way. But if he were domiciled in Ireland having English real estate and settling his English real estate as above, it is doubtful whether he could give his personal estate thus. For L. P. Act, s. 161, does not apply to Ireland (s. 209 (3)), and the old possibility rule (see preliminary note) did apply to money subject to an imperative trust to lay out in purchase of land (*Whitby* v. *Mitchell*, 42 Ch. D. 494; 44 Ch. D. 85).

(*i*) L. P. Act, 1925, s. 28, as amended.

English real estate above devised in settlement and were the same subject to a primary trust for the investment thereof in purchase of freehold land in England or Wales to be settled to the uses and with and subject to the powers and provisions of my English real estate above devised in settlement but not so as to increase or multiply charges or powers of charging, and so that the rents and profits of any leasehold or chattel real estate for the time being remaining unsold after payment thereout of such outgoings as my Trustees consider as properly chargeable to income shall go and be applied as if the same were income of investments made of the proceeds of an actual sale thereof.

11. Any moneys requiring investment whether as being capital moneys or otherwise may be invested in or upon *etc.*

12. [*Clause negativing capitalisation of any portion of mining rents.*]

[13. PROVIDED (*k*) ALWAYS and I declare that if by reason of the number of life interests that may arise under the fore-

---

(*k*) If this clause is inserted, then insert the words in square brackets in clause 4 (B), to make it absolutely clear that this clause has priority over all the limitations following the life estate to D B, including the estates tail: see Sugden, R. P. S., p. 194, para. 8; *Hole* v. *Estcourt*, 4 Myl. & Cr., at p. 192.

If land be limited to A for life, remainder to B for life, or in tail, but if B predecease A then to C for life, or in tail: B has a vested remainder, and C a contingent remainder only (Fearne 215, 216; *Coles* v. *Bejushin*, Plowd. 21; *Cardigan* v. *Curzon-Howe*, [1901] 2 Ch. 479); and if the limitations are in tail, A and B can effectually bar C's contingent remainder in tail, though B do afterwards predecease A (*Cardigan* v. *Curzon-Howe*, *supra*; cp. *Milbanke* v. *Vane*, [1893] 3 Ch. 79; Fearne 374).

B's interest is a vested remainder because it is of the essence of a vested remainder that so long as it itself endures, for it may be merely for life, it is by the very words of the limitation at all times ready to take effect in possession at the very moment, not an hour before or an hour after, at which the particular estate on which it depends ceases: authorities cited above; and see author's article, 51 L. Q. R., at p. 671.

But if the limitation were to A for life, remainder *if B shall survive A* to B for life, or in tail, but if B predecease A then to C for life in tail, we here have an alternative contingent remainder, according to the event that happens, in A or B: in such case the purported bar by A and B of the estate tail would not bar C's contingent estate tail were B afterwards to predecease A: Fearne 225, 372—374, discussing *Loddington* v. *Kime*.

going limitations in my English real estate and the consequent occasions for death duties or for any other reason whatsoever my Trustees shall in their or his absolute and uncontrolled discretion think fit so to do my Trustees may at any time or times during "the period" but not till after the death of the survivor of my said son Charles B and my said grandson Daniell B [and subject to any exercise by both or either of them of the powers of jointuring and charging portions hereinbefore conferred upon him] by deed or deeds appoint that all or any my "English real estate" "my English heirlooms" and "my residuary estate" or any property for the time being representing the same respectively or any part or parts thereof respectively shall from and after such appointment be held in fee simple or otherwise absolutely as the case may be for that person (hereinafter called "the Appointee") who immediately prior to such appointment shall under the limitations hereinbefore contained be entitled to the rents profits income or enjoyment of the property so appointed YET so nevertheless if my Trustees in their or his absolute and uncontrolled discretion think fit but not otherwise that the property so appointed or such part thereof as in such appointment be specified as to be so charged do thenceforth stand charged with the payment of such principal sum or sums carrying such rate of interest to such one or more of the persons actually born and living at the date of such appointment who might if he or they survived the Appointee and such appointment had never been made become entitled immediately or mediately to the rents profits income or enjoyment of the property to which such appointment extends as in every such case my Trustees in their absolute and uncontrolled discretion think fit in such appointment to appoint

AND I DECLARE that the exercise or non-exercise of this power by my Trustees shall not be questionable in any Court of Justice or by any person whomsoever and that my Trustees shall not be under any obligation to render any reason for their or his exercise or non-exercise of this power

AND I DECLARE LASTLY that my Trustees at any time or times if they or he in their or his absolute and uncontrolled discretion think fit and whether before or after the death of the survivor of

the said C B and D B may release all or any of the property subject to this power from their or his future exercise thereof.]

14. [*Any other powers to trustees.*]

15. [*Statutory power of appointment of new trustees vested successively in C B and D B.*]

Form 2.

Voluntary Settlement of Investments Forming Part of His Fortune by a Young Man on Protective Trusts for His Own Benefit, with Provisions for the Settlement of Further Funds and a Power Enabling the Settlement to be Altered with the Consent of the Trustees or of the Court (*a*).

Drafted by A. H. Withers, of Lincoln's Inn.

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN A B of *etc.* (hereinafter called "the Settlor") of the one part and C D of *etc.* and E F of *etc.* (hereinafter called "the Original Trustees") of the other part Parties.

WHEREAS the Settlor being absolutely entitled to the investments specified in the Schedule hereto and being desirous of settling the same in manner hereinafter appearing has transferred or is about to transfer the same to the Original Trustees to the intent that the same shall be held on the trusts hereinafter declared Recitals: title and transfer to trustees;

(*a*) Stamp, *ad valorem*. This form is intended to provide for the case of a young man of substantial means who desires to settle a portion of his fortune for his own protection. It is a voluntary settlement and as such liable to be impeached as made with intent to defeat creditors under s. 172 of the Law of Property Act, 1925, re-enacting the Fraudulent Conveyances Act, 1571. A voluntary settlement honestly entered into, all existing debts being paid and the settlor retaining an income sufficient for probable requirements, is not void under the statute: *Re Lane-Fox*, [1900] 2 Q. B. 508; and see too *Re Holland*, [1902] 2 Ch. 360, and *Re Baker*, [1936] 1 Ch. 61. A voluntary settlement may be defeated under s. 42 of the Bankruptcy Act, 1914 (replacing s. 47 of the Act of 1883), by the subsequent bankruptcy of the settlor within two years of the date of the settlement, or at any time afterwards within ten years from that date, unless it can be proved that the settlement did not leave the settlor insolvent.

absence of power of revocation;

And whereas (*b*) it has been represented to the Settlor by his legal advisers that in settlements of a voluntary nature made without pecuniary or other valuable consideration it is usual and generally proper and advisable that an absolute and unfettered power of revocation should be reserved to the person making the same but the Settlor after carefully considering the representations so made to him by his legal advisers and the amount or value of his property and the circumstances of his family has determined and directed that no power of revocation whatsoever (other than the restricted general power of appointment hereinafter contained) shall be inserted in these presents

settlement of additional funds.

And whereas (*c*) it is considered possible that further properties (whether real or personal) may from time to time be paid or transferred by the Settlor his executors or administrators or some other person or persons to the trustees for the time being of this settlement by way of addition or accretion to the property hereby settled or otherwise upon the trusts of this settlement

Testatum.

Now this settlement witnesseth and it is hereby agreed and declared as follows:—

(*b*) The question of inserting a power of revocation in settlements of this character is one which has to be considered very carefully. Where a young person is executing a settlement his legal advisers must not only explain to him fully the nature of the transaction but should also refuse to act for him if the adviser does not consider the settlement proper in the circumstances of the case (*Powell* v. *Powell*, [1900] 1 Ch. 243; *Lancashire Loans, Ltd.* v. *Black*, [1934] 1 K. B. 381). It is generally considered that a settlement of this character should contain a power of revocation. The absence of such a power does not, however, render the settlement voidable at the instance of the settlor unless it can be shown that he did not understand its effect or his attention was not drawn to the absence of such a power (*James* v. *Couchman*, 29 Ch. D. 212). A power of revocation is omitted from this form, it being thought that the provisions in clauses 4 and 5 adequately protect the settlor. The nature of these provisions should be carefully explained to him. One of the drawbacks to the insertion of a power of revocation in a settlement is that, though it tends to disprove undue influence, it has been considered a "badge of fraud" under s. 172 of the L. P. Act, 1925. The power can be exercised by the trustee in bankruptcy of the settlor in favour of his creditors: Bankruptcy Act, 1914, s. 38.

(*c*) If the settlement contains provisions generally satisfactory to the settlor he may wish from time to time to add to the settled property. His relatives may also find it convenient to bring property they are proposing to settle on him into the settlement.

1. This settlement is made in accordance with the aforesaid desire and determination of the Settlor and for divers other good causes and considerations.

2. In this settlement the following expressions shall have the following meanings namely:— Definitions.

"THE TRUSTEES" shall mean the Original Trustees or the survivors or survivor of them or other the trustees or trustee for the time being of this settlement and (notwithstanding any context) a sole trustee may act for all the purposes of this settlement.

"THE SAID TRUST PROPERTY" shall mean and include (a) the investments specified in the Schedule hereto (b) all properties (whether real or personal) at any time or times hereafter paid or transferred to and accepted by the Trustees by way of addition or accretion to the property hereby settled or otherwise upon the trusts of this settlement and (c) the investments and property from time to time representing the aforesaid investments and properties or any of them or any part or parts thereof respectively.

3. With regard to property hereafter added or proposed to be added to the property hereby settled the following provisions shall apply that is to say:— Provisions for the settlement of additional funds.

(a) (*d*) Without the previous consent of every Trustee for the time being of this settlement no property which involves the holder or owner thereof in any personal liability shall be accepted upon the trusts of this settlement

(b) All lands and hereditaments accepted on the trusts of this settlement shall be held by the Trustees upon trust to sell the same during the life of the Settlor with his consent and after his death at their discretion but with full power to postpone conversion and the net proceeds of sales of such premises and the rents and profits until sale thereof shall be held on the trusts hereby declared of the said trust property and the income thereof.

4 (*e*). The Trustees shall hold the said trust property and Power of appointment.

(*d*) The trustees may reasonably object to receive onerous leaseholds, or shares not fully paid or with unlimited liability.

(*e*) This power is peculiar because it does not take the form of a power of revocation but that of a general overriding power of appointment. The power can be exercised without "revoking" the settlement

the income thereof UPON TRUST for such person or persons (including or not including the Settlor) for such purposes and with and subject to such powers and provisions and generally in such manner in all respects as the Settlor shall by any deed or deeds revocable or irrevocable appoint and in default of and until and subject to any such appointment UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained

PROVIDED ALWAYS that no such appointment as aforesaid shall take effect unless the same be made either with the sanction or approval of an Order (*f*) of the Chancery Division of the High Court of Justice or with the consent in writing of the Trustees or of a majority (*g*) of the Trustees which consent each Trustee shall have an absolute discretion to give or withhold without incurring any responsibility in that behalf

PROVIDED ALSO (*h*) that the Court or (as the case may be)

---

in whole or in part. It enables the settlement to be altered in proper cases to any extent desired provided the consents required by the proviso are obtained. The drawback to this power is that it is a general power: see *Re Phillips*, [1931] 1 Ch. 347, distinguished in *Re Watts*, [1931] 2 Ch. 302, and so is exercisable by the trustee in bankruptcy of the settlor: Bankruptcy Act, 1914, s. 38 (b). The entire settled property may therefore become by reason of this clause assets for the payment of the settlor's debts. In some cases it may be advisable to limit the exercise of a power in this form to a part only of the settled property, as was done in *Re Baker*, [1936] 1 Ch. 61, conferring a special power only in respect of the remainder of the settled property.

(*f*) The drawback to this provision is that it is not clear that the Court will agree to consider a matter of this character where the settlor is of necessity not a ward of Court. In an unreported case the learned Judge commented adversely on a clause of this kind, considering that it was not proper for settlors to burden the Judges with obligations of this character. In *Re Baker*, [1936] 1 Ch. 61, however, Farwell, J., considered a settlement which contained such a clause in another connection, and it appears from his observations in the course of his judgment that he considered the clause a proper one. The settlement itself does not give the Court jurisdiction to intervene, but it would appear that the Court could give its sanction to the exercise of the power in proceedings for the administration of the trusts of the settlement.

(*g*) It is well to confer a power to consent on a majority of the trustees, as it may happen that one is abroad or ill and his consent may not be procurable.

(*h*) This clause is not strictly necessary, but it seems advisable to indicate the lines on which it is desired that the trustees shall exercise their discretion: see *Re Dilke*, [1921] 1 Ch. 34; *Re Phillips*, [1931] 1 Ch. 347.

each Trustee in considering whether to give or withhold any such sanction approval or consent as aforesaid is hereby authorised and requested (but in no sense required) to consider what under all the circumstances of the case is most for the permanent benefit of the Settlor and to give effect to all reasonable requests of the Settlor and to ignore entirely the interests of all other persons interested in any manner under the trusts of these presents.

[*Or*, 4. The Trustees shall hold the said trust property and the income thereof UPON TRUST for such person or persons (including or not including the Settlor) for such purposes and with and subject to such powers and provisions and generally in such manner in all respects as the Settlor and any two other persons being trustees of this settlement shall by any deed or deeds revocable or irrevocable jointly appoint and in default of and until and subject to any such appointment UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained Alternative clause (*i*).

PROVIDED ALWAYS that each Trustee shall have an absolute discretion to join or abstain from joining in any such appointment as aforesaid without incurring any responsibility in that behalf and that each Trustee in considering whether to join or abstain from joining in any such appointment as aforesaid is hereby authorised and requested (but in no sense required) to consider what under all the circumstances of the case is most for the permanent benefit of the Settlor and to give effect to all reasonable requests of the Settlor and to ignore entirely the interests of all other persons interested in any manner under the trusts of these presents.]

5 (*k*). Subject as hereinbefore declared the Trustees may at any time or times during the life of the Settlor with his con- Power to trustees to raise a gross sum.

(*i*) This alternative clause is given to meet the case where a settlor does not wish to cumber the settlement with a power to apply to the High Court for its sanction. The possible difficulties of such an application are considered *ante*, note (*f*). This clause has the advantage that the power is not exercisable by the settlor's trustee in bankruptcy: see note (*e*).

(*k*) This enables small sums to be paid out to the settlor without the need of a formal appointment under clause 4.

sent in writing as to (all or) any part or parts (not exceeding in the whole £——) of the said trust property transfer or raise and pay the same to the Settlor for his own absolute use and benefit or raise and pay or apply the same for the advancement or otherwise for the benefit of the Settlor in such manner as the Trustees shall think fit.

Protective trusts.

6 (*l*). Subject as hereinbefore declared the income of the said trust property accruing during the life of the Settlor shall be held upon the trusts following namely:—

Determinable life interest to settlor.

(a) Upon trust to pay the same to the Settlor unless and until some act or event (other than any exercise or any consent to any exercise of any power of appointment or advancement (*m*)) shall be done or happen whereby such income or part thereof if belonging absolutely to the Settlor would become vested in or payable to or charged in favour of some other person or persons or a corporation but no Trustee shall for any of the purposes of this settlement be affected by any such act or event before he receives express notice thereof (*n*)

Discretionary trust.

(b) Subject as aforesaid upon trust during the life of the Settlor and (as to money representing income in hand or accrued at the death of the Settlor) within three years after the death of the Settlor (*o*) to pay the said income to or apply the same for or towards the discharge of all or any debts or alleged debts (*p*) or the maintenance and personal support or otherwise

---

(*l*) This clause was originally published in the *Solicitors' Journal* (Vol. 77, p. 243), to the proprietors of which we are indebted for their permission to reprint it here. The clause is offered as an alternative to the statutory protective trusts contained in s. 33 of the Trustee Act, 1925. The *Solicitors' Journal* (Vol. 77, pp. 94, 110, 132, 151, 170, 192, 209 and 243) contains an exhaustive consideration of the statutory protective trusts, and the learned writer suggests that such trusts are defective in some respects, and the above clause is offered as an alternative more likely to give effect to the wishes of the settlor and to facilitate the task of the trustees should the discretionary trusts come into operation. If these trusts are considered too long the statutory protective trusts can be substituted by reference to s. 33 in the usual way.

(*m*) See *Re Stimpson*, [1931] 2 Ch. 77, and *Re Hodgson*, [1913] 1 Ch. 34.

(*n*) See *Re Forder*, [1927] 2 Ch. 291, and the cases there discussed.

(*o*) This is convenient. It allows for the interest on dividends in arrear.

(*p*) This provision enables the trustees to dispense with strict proof of the debts.

for the benefit of all or such one or more to the exclusion of the other or others of the persons mentioned in paragraph (c) of this clause if more than one in such shares as the Trustees (or a majority in point of number of the Trustees) shall from time to time in their absolute discretion think proper and so that any payment or application to or for any particular person or purpose shall continue only so long as the Trustees or such majority as aforesaid shall think fit

Objects of the discretion.

(c) The objects of the foregoing discretionary trust are the Settlor and the wife if any of the Settlor and the children and remoter issue of the Settlor's father (*q*) for the time being in existence whether minors or adults and the person or persons in whose company or under whose care or control or by or with whom the Settlor may from time to time be residing travelling or employed and such other person or persons as the Settlor (*r*) with the previous consent in writing of the Trustees or such majority as aforesaid shall from time to time in writing declare to be an object or objects of such discretionary trust and the person or persons who would have become entitled to the capital of the said trust property under the statutes for the distribution of the personal estates of intestates for the time being in force had the Settlor died immediately before the payment or application in question possessed of such capital intestate domiciled in England and without ever having been married

Provided always that under no circumstances shall any person who is for the time being a trustee of this settlement be an object of such discretionary trust

(d) The Trustees are requested (*s*) but not required to treat the Settlor and the spouse and issue of the Settlor as the primary objects of the foregoing discretionary trust and so far as

---

(*q*) Where the settlor is unmarried this provision is desirable, as in the absence of any wife or children of the settlor it is well to indicate alternative objects of the discretion.

(*r*) This enables the settlor to indicate the persons he wishes to benefit and extends indefinitely the possible objects of the trust. The fact that the settlor indicates such a person or persons does not of course cut down the discretion of the trustees, who need not fall in with the wishes of the settlor, but their power to do so in fact increases the control of the settlor over trust income.

(*s*) See note (*h*), *ante*.

practicable to pay or apply in each year the whole of the income for that year.

Power to appoint life interest to wife.

7. Subject as hereinbefore declared the Settlor may by deed (executed prior to and in contemplation of marriage) or by will or codicil appoint that as from the death of the Settlor or from any later date (all or) any part or parts (not exceeding in all one —— part) of the income of the said trust property shall be paid to any person who may be the wife of the Settlor at the death of the Settlor (*t*) for the residue of the life of such person or for any less period and subject to any conditions or restrictions the Settlor may think fit and any such appointment may provide (due regard being had to the rule against perpetuity) that all or any part or parts of the said income accruing during all or any part or parts of the life of such surviving wife shall be paid to or held by such Trustees for such periods on such discretionary (*u*) trusts for or between such persons (including such wife) as the Settlor may think fit to appoint or declare.

Trust for children.

8. Subject as hereinbefore declared the said trust property shall be held IN TRUST for all or any to the exclusion of the others or other of the children and remoter issue of the Settlor if more than one in such shares and in such manner in all respects as the Settlor shall by deed revocable or irrevocable or by will or codicil appoint AND in default of and subject to any such appointment IN TRUST for all or any the children or child of the Settlor who shall being male attain the age of twenty-one years or being female attain that age or marry and if more than one in equal shares PROVIDED ALWAYS that any share appointed to a child or to his or her issue under the foregoing power shall in default of appointment to the contrary be brought into hotchpot by such child in the division of the unappointed part of the said trust property

Hotchpot provision.

PROVIDED ALSO (*x*) that the Settlor may at any time or times

(*t*) This avoids the question considered in *Re Williams' Settlement*, [1929] 2 Ch. 361.

(*u*) If the settlor may want to appoint on discretionary trusts, an express power to do so is necessary: *Re Boulton's Settlement Trust*, [1928] Ch. 703. Such an appointment would otherwise be void both as being a delegation of the trust and in excess of it.

(*x*) This provision may be useful on the marriage of the settlor and enables him to modify the trusts without having recourse to clause 4.

by deed alter the power of appointment lastly hereinbefore contained by making the same exercisable by the Settlor and his wife jointly by deed revocable or irrevocable and in default of and subject to any such joint appointment by the survivor of the Settlor and such wife in like manner or by will or codicil and this power of modification may be exercised either before or after marriage and as to all or part of the said trust property and subject to such restrictions if any as the Settlor thinks fit but may only be exercised if such wife be born before the date of this settlement.

Power of advancement.

9. The Trustees may as to any part or parts (not exceeding together one-half) of the presumptive or vested share of any person (being a descendant of the Settlor) transfer or raise and pay the same to such person for his or her own absolute use and benefit or raise and pay or apply the same for or towards the education or advancement or otherwise for the benefit of such person in such manner as the Trustees may think fit but this power shall not be exercised to the prejudice of any prior trust existing or appointed under any of the trusts or powers hereinbefore in this settlement contained without the consent of the person for the whole or part of whose life such trust shall or may take effect.

Power to appoint by will.

10 (*y*). Subject as hereinbefore declared the said trust property shall be held IN TRUST for such person or persons for such purposes and in such manner in all respects as the Settlor shall by will or codicil appoint AND in default of and subject to any such appointment IN TRUST for such person or persons as would have been entitled to the same under the statutes for the distribution of the personal estate of intestates at the death of the Settlor had the Settlor died possessed thereof intestate domiciled in England and without ever having been married such persons if more than one to take as tenants in common in the shares in which they would have taken under the same statutes.

Ultimate trust for next-of-kin.

(*y*) The ultimate trust must not be in favour of the settlor absolutely and he must not be given a general power of appointment. Otherwise if he became bankrupt he could not exercise the power in clause 4 or receive any benefit under clause 5 of the settlement without the consent of his trustee in bankruptcy: *Re Cooper*, 27 Ch. D. 565, at p. 569.

Powers of trustees;

11. The Trustees shall have the following powers namely:

power to allow investments to remain unconverted;

(a) Power to allow the investments specified in the —— Schedule hereto and all the properties at any time or times hereafter transferred to and accepted by the Trustees by way of addition or accretion to the property hereby settled or otherwise upon the trusts of this settlement as and when the same respectively shall be received in possession by the Trustees or any of them or any part or parts thereof respectively to remain in the actual state of investment thereof so long as the Trustees may think fit

power to sell investments;

(b) Power at any time or times with the consent in writing of the Settlor during his lifetime and after his death at the discretion of the Trustees to sell call in or convert into money the aforesaid investments and properties or any of them or any part thereof respectively but so that no policy or other reversionary interest be sold before it falls into possession

power to invest;

(c) Power with such consent or at such discretion as aforesaid to invest the moneys produced by such sale calling in or conversion and any other capital moneys which may be received by the Trustees in respect of the said trust property (when the same respectively shall have been received by the Trustees) in the names (or under the legal control) of the Trustees in any manner hereinafter mentioned that is to say:—

investment clause;

(i) In any of the public stocks or funds or Government securities of the United Kingdom or India or any foreign country or any British colony (which expression in this clause does not include the Irish Free State but with this exception includes any state dependency dominion or commonwealth) or any province or constituent part of any such colony

(ii) Upon the security of freehold leasehold or chattel real properties in England or Wales

(iii) In the purchase of land in England being either freehold or held for a term of which not less than fifty years shall be unexpired at the date of purchase all lands so purchased to be held by the Trustees upon trust to sell the same with such consent or at such discretion as aforesaid

(iv) In the erection alteration improvement or structural

repair of any buildings on any land forming part of the said trust property

(v) In or upon the stocks funds shares debentures mortgages or securities of any corporation body or company municipal county local commercial or of any other description in the United Kingdom or India or any British colony or any foreign country or

(vi) Upon the security of any interest for a life or lives or determinable on a life or lives or any other event in real or personal immovable or movable property wheresoever situate or arising together with a policy or policies of assurance on such life or lives or against such event

PROVIDED ALWAYS that no money shall be invested under any of the foregoing provisions of this clause in any stocks funds bonds shares or securities to bearer or transferable by mere delivery or delivery and endorsement though coming within the general description of investments hereinbefore authorised

power to vary investments;

(d) Power with such consent or at such discretion as aforesaid to vary or transpose any investments into or for any other or others of any nature hereinbefore authorised and to vary the terms of or property comprised in any security

power to pay income to bankers or agents;

(e) Power at any time or times to pay or remit or cause to be paid or remitted all or any part of the annual income hereby settled in trust for the Settlor to such banker or other agent as he shall notwithstanding provisions for forfeiture heretofore contained in writing from time to time direct and every payment or remittance so made or caused to be made by the Trustees pursuant to such direction shall be as effectual as against the Settlor as if the same had been made into his own hands and upon his receipt and the Trustees shall not be responsible for any act or default of any such banker or agent

PROVIDED ALWAYS that this provision shall not restrict the Trustees from requiring from time to time as the said income shall accrue due a special direction from the Settlor respecting the application thereof or otherwise paying the same into his own hands if the Trustees shall deem it advisable so to do and every such direction shall be revocable and the Settlor shall not

be capable of disposing of or charging the said income by way of anticipation

power to apportion payments;

(f) Power to determine as the Trustees shall consider just whether any money shall for the purposes of these presents be considered as capital or income and out of what part of the said trust property and whether out of income or capital any expenses outgoings or losses shall or ought to be paid or borne

power of appropriation;

(g) Power from time to time to appropriate the said trust property or any part thereof in the same manner and with the same consequences as if the Trustees were the personal representatives of a deceased person and were acting under the statutory power of appropriation

power of advancement;

(h) Power from time to time to exercise the statutory power of advancement under section 32 of the Trustee Act 1925 in the same manner and with the same consequences as if subsection 2 of such section had been omitted from such section

power to settle questions.

(i) Power generally to determine as the Trustees shall consider just all questions and matters of doubt arising in the execution of the trusts of these presents so that every such determination whether made upon a question actually raised or implied in the acts or proceedings of the Trustees shall be conclusive and bind all persons interested under these presents.

Appointment of new trustees.

12. The power of appointing a new Trustee or new Trustees of these presents shall be vested in the Settlor during his life.

Power for professional trustee to charge.

13. Any Trustee for the time being hereunder being a solicitor or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business done by him or his firm in the premises whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of a solicitor or other professional person (*z*).

IN WITNESS *etc.*

THE SCHEDULE.

[*To contain particulars of the investments in the first instance settled by the above-written settlement.*]

(*z*) Presumably the settled property in a case of this character will exceed £500. If it does not, the usual certificate as to value should be added.

Form 3.

Voluntary Settlement of Investments in the Hands of Trustees Representing Accumulations of Income and Provisions for the Investment of Future Surplus Income (*a*).

Drafted by B. A. Bicknell, of Lincoln's Inn.

THIS SETTLEMENT made the —— day of —— 19— BETWEEN A of *etc.* of the one part and X of *etc.* and Y. of *etc.* (hereinafter called "the Trustees") of the other part — Parties.

WHEREAS these presents are intended to be supplemental to a deed of settlement made the —— day of —— between Z of the one part and the Trustees of the other part by virtue whereof divers investments and securities are held in settlement by the Trustees as trustees thereunder upon trusts under which the income of one moiety of the same or of the varied investments for the time being representing the same (hereinafter called "the principal trust premises") is paid to the said A during her life and after her death the same is limited in favour of her husband and children or remoter issue in manner expressed in the said trust instruments — Recitals: original settlement;

AND WHEREAS a large part of the income which has arisen and been received by the Trustees in respect of the principal trust premises down to the present time has not been required or called for by the said A (or by her sister B to whom under the said settlement the other moiety of the said income is payable for her life) but remains undrawn in the hands of the Trustees — accumulations of surplus income;

AND WHEREAS the Trustees have from time to time invested portions of the said undrawn income in the investments and — investment of surplus income;

(*a*) Stamp, *ad valorem*. This settlement is intended to meet the case where trustees hold investments representing accumulations of income derived from a young person's settled estate. It sometimes happens that trustees invest surplus income in their hands, though they have no power to do this. In these circumstances, if the beneficiary can be persuaded to do so, the best plan is for him, or more generally her, to ratify the investments which have been made and bring them into settlement. If this is done, however, a power of revocation should be inserted in the settlement.

securities specified in the Schedule hereto of which one moiety is held for the said A and the other moiety for her said sister B

And whereas the said investments were made without the express consent of the said A but so far as regards one moiety of the same she is desirous of ratifying the same

desire to settle.

And whereas the said A is desirous of settling in manner hereinafter expressed her one moiety of the said undrawn income so far as it stands invested in manner aforesaid (and she may also in the future be desirous that some further part of the said undrawn income or of the income to arise in the future from the principal trust premises shall be similarly settled)

Witnesseth.

Now this deed witnesseth that she the said A doth hereby direct and declare and it is hereby agreed that the Trustees do and shall henceforth stand possessed of one equal moiety or half part of the investments and securities specified in the said Schedule hereto (and also all other moneys or investments (if any) representing past or future income of her said moiety of the principal trust premises in respect of which the said A may hereafter in writing addressed to the Trustees signify her desire for a settlement thereof) upon the like trusts and subject to the like powers (except the power of investment) as under the said settlement now affects the principal trust premises and to the intent that the same may henceforth be deemed capital and no longer income And it is hereby further agreed and declared that so far as regards the said moiety hereby settled the Trustees may either retain the same or any part thereof in the existing investments thereof or with the consent of the said A during her life sell and convert the same into money and with the like consent invest the money so arising in any manner approved by the Trustees (and whether being authorised by law for trust money or not (*b*)) with power to vary and transpose from time to time any such investments Provided also that it shall be lawful for the Trustees with the consent of the said A from time to time similarly to invest and vary the investments of any other moneys (whether subject or not subject to this present settle-

(*b*) If the power of investment in the original settlement is of a limited character, it is advisable to widen the range in a settlement of surplus income.

ment) which shall be in their hands in respect either of past or future income of the said moiety and shall not be required in cash by the said A but so nevertheless that any investment so made shall (unless brought within the scope of this settlement as aforesaid) remain at the order and disposition of the said A alone PROVIDED ALWAYS and it is HEREBY DECLARED that it shall be lawful for the said A from time to time or at any time by any deed or deeds with the consent of the Trustees to revoke all or any of the trusts and powers herein contained and to declare any new or altered trusts concerning the property hereby settled AND it is HEREBY DECLARED that the said A during her life shall have power to appoint a new trustee or new trustees hereof and that the expression "the Trustees" shall be construed where the context so admits as extending to the trustees or trustee hereof for the time being hereof.

Power of revocation.

Power to appoint trustees.

IN WITNESS *etc.*

THE SCHEDULE.

[*To contain a list of the investments representing accumulations of income in the hands of the Trustees which are settled.*]

Form 4.

Notice to Quit: Severance of Reversion (*a*).

Drafted by T. J. Sophian, of the Inner Temple.

To Mr. E G W,

of —— in the parish of —— in the county of ——.

WHEREAS at all material times prior to the service of this

(*a*) Where the reversion of premises which are let is severed, the provisions of s. 140 of the L. P. Act, 1925, and if the demised premises constitute an agricultural holding, of s. 2 of the L. P. Act, 1926, as well, must be carefully observed.

Section 140 provides that notwithstanding such severance, and notwithstanding the avoidance or cesser of the term granted as to part only of the land comprised in the original tenancy, every condition or right of re-entry—which will include the right to determine the lease by notice to quit or otherwise, and every other condition, is to be apportioned and to remain annexed to the severed parts of the reversionary estate as

Notice the reversion expectant upon your tenancy of the land and premises and situate in the parish of —— in the county of —— more particularly delineated on the plan annexed hereto and thereon coloured yellow green and pink has become severed and has become and is now vested as to such part thereof as is coloured green on the said plan in A H P of —— in the county of —— and P P of —— in the county of —— as joint tenants and as to the remainder thereof in other persons

And whereas the said A H P and P P have become in the manner above stated and are your landlords of such part of the said land and premises as are coloured green on the said plan

Now We [*name*] of [*address*] as solicitors and agents for and on behalf of your landlords the said A H P and P P hereby give you notice to quit and deliver up possession of the said land and premises coloured green on the said plan and commonly described as —— which you hold of the said A H P and P P on the —— day of —— next or on such other day as your tenancy shall expire next after the end of one year from the service of this Notice (*b*).

Dated this —— day of —— 19—.

---

severed, and to be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

Each reversioner of each part may accordingly give the tenant due notice to quit that part, independently of any other reversioner. The tenant, however, on receiving notice to quit part may within one month determine the lease in regard to the rest of the land comprised in the original tenancy, by giving the other reversioners of the other parts counter-notices expiring at the same time as the original notice.

In the case of an agricultural holding, the tenant, by virtue of the amendment introduced in sub-s. 2 of s. 140 of the L. P. Act, 1925, by the L. P. Act, 1926, may, on receiving notice to quit part, within twenty-eight days thereof serve on the other reversioners a counter-notice to the effect that he accepts the notice to quit as a notice to quit the entire holding given by all the reversioners. Such an acceptance will be equivalent to the acceptance of a notice to quit to which para. (d) of s. 12 (7) of the Agricultural Holdings Act, 1923, apply. In that event the tenant will become entitled to compensation for disturbance in respect of the whole holding, except in the two cases referred to in s. 12 (7) (d) of the A. H. Act, 1923.

(*b*) See *Hirst* v. *Horn* (1840), 6 M. & W. 393; *Phipps & Co.* v. *Rogers*, [1925] 1 K. B. 14.

Form 5.

Agreement for Letting Seats in a Stand to View a Procession (*a*).

Drafted by B. A. Bicknell, of Lincoln's Inn.

AN AGREEMENT made the —— day of —— 19— BETWEEN A of *etc.* of the one part and B of *etc.* of the other part Parties.

1. In consideration of the sum of £x paid as to £x – y (*b*) part thereof on the signing hereof by the said B to the said A (the receipt of the said sum of £x – y the said A hereby acknowledges) and of the additional sum of £y being the balance of the said sum of £x to be paid on or before the —— day of —— A hereby gives to B the sole and exclusive right between the hours of —— and —— o'clock on the —— day of —— to occupy by himself his agents and visitors —— seats numbered Nos. —— to —— to be erected by the said A in front of the premises known as —— and facing —— Street. Licence to use seats.

2. The said A hereby undertakes to erect in the front of the said premises a stand in a proper and workmanlike manner which shall comply in every respect with the requirements (if any) of the police and of the local authority or authorities and to place Undertaking to erect seats.

(*a*) Stamp *ad valorem* on the consideration money. This form is suggested as the basis of an agreement for the letting of seats to view a procession where the seats are not as yet in being so that it is not possible for the parties to specify with absolute definiteness the exact position of the seats in question. This agreement operates as a licence to occupy the seats when erected and also as an agreement to erect seats.

(*b*) A deposit should be taken on the signing of the agreement. The amount of such deposit should depend in part on the time fixed for the payment of the balance of the consideration. If the balance is to be paid before the erection of the seats 10 per cent. would appear sufficient, if not, a larger sum would seem necessary as the hirer will require some indemnity in case the procession does not take place. He should insure against this risk, but the premiums being generally high it will probably not be possible to cover the entire risk.

thereon suitable seats (*c*) to be of the width of not less than sixteen inches each and such seats shall have a clear and uninterrupted view of —— Street and shall not be more than —— feet nor less than —— feet above street level.

Provision if erection becomes impossible.

3. In the event of the police (*d*) or local or other public authority by any regulation or otherwise preventing the erection of the said seats in the manner provided in this agreement the said B shall have the option of being repaid all sums paid under this agreement without interest or further compensation or of taking a licence to occupy such alternative seats (if any) as the said A may be able to provide upon the terms and conditions of this agreement so far as the same may be applicable to such alternative seats.

User of seats.

4. The said B shall be entitled to allow such guests as he may think fit to occupy the said seats and shall be responsible for their behaviour to the said A and shall be liable to make good all damage (if any) done by them.

Failure if procession does not take place.

5. The licence (*e*) hereby granted is for the purpose of viewing the —— procession which is to pass the said premises on the —— day of —— In case the said procession shall not take place on the said —— day of —— or shall not pass the said premises A shall be entitled to retain the said sum of £x−y [and (*f*) the said sum of £y if the same has already been paid] and this agreement shall be treated as rescinded subject to the proviso following namely that in the event of the procession being merely

---

(*c*) In each case it will be necessary to consider what should be specifically mentioned in the undertaking to erect seats. The terms of this undertaking must be adapted to the requirements of the actual site in question.

(*d*) This clause is necessary in order to make clear the position should the erection of the stand be forbidden.

(*e*) It is advisable to specify what is to happen in the event of the procession contemplated not taking place. If this is not done, the contract is not void *ab initio*, when the failure of the condition, that is the passing of the procession, is ascertained, but all outstanding obligations under it and those only are discharged. Payments already made cannot be recovered back: *Krell* v. *Henry*, [1903] 2 K. B. 740, and any payment actually accrued due is still recoverable, *Chandler* v. *Webster*, [1904] 1 K. B. 493.

(*f*) If the cancellation of the procession is shortly before the date of the procession and the final payment has been made, the question arises whether the last payment should be returned. If the stand has been erected it would seem not.

postponed and taking place within eight weeks from the said —— day of —— the said B shall on payment of the said sum of £y (if not already paid) be entitled to occupy the said seats on the day on which the said procession shall take place and this agreement shall be construed as if the actual date of the said procession were inserted herein instead of the —— day of ——

PROVIDED THAT should the said B desire to exercise the option hereby conferred and occupy the said seats on any day substituted as the day of the said procession he shall give to the said A not less than seven days' notice of his said desire and at the same time pay to the said A the said sum of £y if the same has not already ben paid and in the event of the said notice or payment not being given or made the said A shall be at liberty to grant a licence to occupy the said seats to such other persons on such terms and conditions as he may think fit and this agreement shall be rescinded accordingly.

Provision as to entertainment tax.

6. The said B shall pay (*g*) on or before the —— day of —— to the said A such additional sums (if any) as may become payable for entertainment tax or other duty in respect of the moneys hereby agreed to be paid for the said seats.

Declaration as to value.

7. The parties hereby certify that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500.

AS WITNESS *etc.*

(*g*) If the tax has not been paid in the first instance, this clause is advisable.

Form 6.

Sub-mortgage by way of Collateral Security by a Mortgagee Entitled to a Moiety of the Moneys Charged on the Capital and Assets of a Share in a Partnership Business (*a*).

Drafted by B. A. Bicknell, of Lincoln's Inn.

Parties.

THIS DEED OF SECURITY made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Borrower") of the one part and B of *etc.* and C of *etc.* (hereinafter together called "the Mortgagees") of the other part is SUPPLEMENTAL to two several deeds namely (a) a mortgage (hereinafter called "the first principal deed") dated the —— day of —— and made between D of the first part E and the Borrower of the second part and F of the third part whereby all the share and interest in the capital and assets of a partnership business of grocers carried on by the said D and the said F under articles of partnership dated the —— day of —— and the profits thereof to which the said D then was or might thereafter during the continuance of that security become entitled and also a policy of assurance for the sum of £—— (with profits on the life of the said D with the —— Assurance Society dated the —— day of —— and numbered —— under the annual premium of £—— were assigned to the said E and the Borrower by way of mortgage to secure the payment of the sum of £x advanced to the said D by the said E and the Borrower out of moneys belonging to them on a joint account with interest thereon at the rate of £— per cent. per annum and (b) a mortgage (hereinafter called "the

(*a*) Stamp, *ad valorem*. This sub-mortgage is intended as a collateral security where the moneys advanced are also secured by another deed. A sub-mortgage in this form is somewhat unsatisfactory, as the mortgagor, being only entitled to a part of the mortgage debt, can only transfer such part to the mortgagee. The mortgagee is, therefore, not in a strong position should he seek to enforce his security, being dependent on the concurrence of the other original mortgagee. Before completion, the mortgagee, moreover, should inquire of the original mortgagor and of the co-mortgagee of the borrower as to the state of the mortgage accounts. After completion he should give notice of the change both to the original mortgagee and to the other mortgagor.

second principal deed") bearing even date with but executed immediately before this deed and made between the same persons as are parties hereto and in the same order whereby a policy of assurance for the sum of £—— on the life of the Borrower with the —— Assurance Society dated the —— day of —— and numbered —— under the annual premium of £—— was charged in favour of the Mortgagees to secure the payment of the sum of £y advanced to the Borrower by the Mortgagees out of moneys belonging to them on a joint account with interest thereon as therein mentioned and to secure the indemnity for the Mortgagees in respect of the said advance.

WHEREAS—

Recitals.

(A) The said principal sum of £x remains owing on the security of the first principal deed with current interest thereon

(B) The Borrower is absolutely entitled for his own benefit to the sum of £z part of the principal sum of £x secured by the first principal deed and to one moiety or equal half part of the interest payable thereunder and thereby secured

(C) Upon the treaty for the advance of the said sum of £y secured by the second principal deed it was agreed that the repayment thereof with such interest (if any) thereon as is mentioned in the second principal deed and the indemnity for the Mortgagees in respect of and in relation to the said advance for which provision is made in the second principal deed should be further secured in manner hereinafter appearing

Testatum.

NOW THIS DEED WITNESSETH as follows:—

1. This deed is made in pursuance of the said agreement and in consideration of the said advance of £y by the Mortgagees to the Borrower.

Assignment.

2. The Borrower as beneficial owner hereby assigns unto the Mortgagees FIRST ALL THAT sum of £z (part of the said principal sum of £x secured by the first principal deed) to which the Borrower is so entitled as aforesaid

AND SECONDLY ALL THAT one moiety or equal half part to which the Borrower is also entitled as aforesaid of the interest henceforth to become due under the first principal deed in respect of the said principal sum of £x

AND THIRDLY ALL securities for and rights and means of

enforcing payment of the said premises to which the Borrower is or may become in any wise entitled either jointly with the said E or any other person or persons or solely

To HAVE AND RECEIVE the same unto the Mortgagees absolutely but nevertheless upon with and subject to the trusts powers and provisions hereinafter declared and contained of and concerning the same.

Trusts of mortgage moneys.

3. The Mortgagees shall stand possessed of the said sum of £z hereby assigned if and when the same shall be received in possession by the Mortgagees Upon trust with the consent of the Borrower during his life and after his death at the discretion of the Mortgagees to invest the same in or upon any of the investments or securities specified in the Schedule hereto with power from time to time with the like consent or at the like discretion to vary or transpose any such investments or securities for or into others of like nature.

4. The mortgagees shall stand possessed of the said sum of £z hereby assigned and the investments and securities for the time being representing the same and also of so much of the interest henceforth to become payable under the first principal deed in respect of the said principal sum of £x as is hereby assigned and of all securities for and means of enforcing payment of the said premises hereby assigned Upon trust that the same shall stand charged by way of collateral security with the payment to the Mortgagees of the principal moneys and interest and other sums of money costs damages and expenses for the time being secured by the second principal deed and also with the indemnity of the Mortgagees and each of them and their respective representatives in respect of the matters referred to in or within the scope of the covenant for indemnity contained in the second principal deed and on the part of the Borrower and his personal representatives to be observed and performed.

5. Subject to the trusts and provisions hereinbefore declared and contained the Mortgagees shall stand possessed of the said trust premises In trust for the Borrower absolutely.

Power of mortgagees to enforce the security.

6. The Borrower hereby irrevocably empowers the Mortgagees and each and every other of them the person or persons for the time being entitled to the benefit of the security consti-

tuted by the second principal deed and this deed and his or their nominee or nominees substitute or substitutes to demand sue for recover and give valid receipts for the said sum of £z and interest hereby assigned in the name or names of the Borrower or his personal representatives or otherwise and also (in co-operation with the said E or any other person or persons or by himself or themselves) in such name or names as aforesaid or otherwise to demand sue for recover and give valid receipts for the principal moneys and interest and other moneys secured by the first principal deed or any part or parts thereof and generally to maintain and enforce that security and in connection with the premises to compromise compound abandon submit to arbitration or otherwise settle any debt account claim or thing whatever and for the purposes aforesaid or any of them to execute and do all such instruments and things (in conjunction with any other person or persons or otherwise) as shall be deemed necessary or expedient And it is hereby agreed and declared that all costs charges and expenses incurred and other sums expended in respect of the purposes aforesaid or any of them shall be deemed to be moneys properly paid by the Mortgagees.

Mortgagees' power of sale.

7. The statutory power of sale shall apply to this security but without the restrictions contained in section 103 of the Law of Property Act 1925 as to giving notice or otherwise and such power of sale shall become exercisable by the Mortgagees at any time or times after the execution hereof.

Power of the borrower to join in any transfer of the mortgage.

8. The Borrower shall be entitled to transfer or to join with the said E and any other necessary party or parties in transferring the said principal sum of £x and the interest thereon and the securities therefor subject nevertheless to the assignment hereby effected and the trusts and provisions herein contained and upon any such transfer the Borrower shall give notice of this security to the person or persons to whom such transfer shall be made and shall also give notice in writing of such transfer to the Mortgagees.

Mortgagees need not enforce original mortgage.

9. It shall not be incumbent on the Mortgagees to enforce or realise or join in enforcing or realising the security created by the first principal deed or to take any steps or proceedings for that purpose unless they shall think fit and they shall not be

answerable or responsible for any loss occasioned by any delay or omission in any such respect.

Costs.

10. All costs charges and expenses properly incurred hereunder by the Mortgagees and all moneys properly paid by the Mortgagees shall together with interest thereon at the rate hereinafter mentioned be charged on the property for the time being subject to this security and shall on the same being paid be repaid on demand to the Mortgagees by the Borrower with interest thereon from the time of payment at the rate of £4 per cent. per annum and until such demand shall be made and complied with the Borrower shall in part payment of such interest pay to the Mortgagees interest at the rate aforesaid on the moneys so paid and for the time being not yet repaid on the —— day of —— and the —— day of —— in every year PROVIDED that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Mortgagees may or but for the said charge would have for the moneys thereby secured or any part thereof.

Covenant for title.

11. The Borrower hereby covenants with the Mortgagees that he has not done or knowingly suffered or been party or privy to anything whereby he is in any wise hindered from making the assignment hereby effected or whereby the said principal sum of £x or the securities therefor are or may be incumbered charged or otherwise affected.

Definitions.

12. In this deed (except where the context otherwise requires) the expressions "the Borrower" and "the Mortgagees" respectively include any corporation person or persons deriving title under the Borrower and the Mortgagees respectively.

IN WITNESS *etc.*

THE SCHEDULE.

[*To contain a list of the investments authorised for the investment of moneys received hereunder.*]

Form 7.

Contract for Purchase of Freehold Land on which it is Intended to Erect a Factory or Other Commercial Building. Variations to Meet Cases in which the Land is Part only of the Total Site Required, for the Erection of the Building (*a*).

Drafted by E. O. Walford, LL.D., Solicitor.

AN AGREEMENT made this —— day of —— One thousand nine hundred and —— BETWEEN —— of —— (hereinafter called "the Vendor") of the one part and —— of —— and —— of —— (hereinafter called "the Purchasers") of the other part Parties.

WHEREBY IT IS AGREED as follows:—

1. The Vendor will sell and the Purchasers will purchase Agreement for sale.

(*a*) Where it is proposed to purchase land for the erection of a large commercial building, a theatre or other public building, it is obviously desirable that a contract should exist before the heavy expense of final plans is incurred. It is accordingly becoming usual to provide for a right of rescission in the event of plans not being passed. Again, the land may be affected by restrictive covenants which have to be the subject of a formal release. Further difficulties may arise as to rights of light. In addition to these matters the position is now further complicated by the necessity of complying with the Restriction of Ribbon Development Act, and the requirements of the Town Planning Authority, which may be a body quite distinct from the local authority. Another difficulty may be that the site required consists of several properties separately owned.

This Form is intended to cover these difficulties by providing a certain limited right of rescission. Clause 10 links up the contract with the other contracts for purchase of the other parts of the site. Clause 11 gives a right of rescission if after a certain period the position as to approval of plans, removal of restrictions, rights of light, and drainage rights, has not been satisfactorily cleared up. Either party may rescind after the date fixed, but the vendor's rescission notice does not operate for seven days, within which period the purchaser may elect to waive all further rights of rescission under the contract. This provision is intended to safeguard the purchaser against an oversight of the rescission date. The vendor is not prejudiced, as if he does not wish to allow any further period of grace he may immediately upon the expiry of the rescission period give notice of rescission, in which case the position will be automatically resolved within seven days.

Any purely arbitrary rescission is impossible as clause 11 (ii) provides that the purchaser must submit plans, etc., and use his best endeavours to obtain the necessary approvals and consents.

at the price of —— the fee simple in possession with vacant possession free from incumbrances and from all claims of tenants of the property specified in the First Schedule hereto subject however as hereinafter provided.

Deposit.

2. The Purchasers shall pay to the Vendor's solicitors as stakeholders on the signing hereof the sum of —— as a deposit and in part payment of the said purchase price.

Incorporation of Second Schedule.

3. The property is sold subject to the provisions hereinafter contained and to the Special Conditions set out in the Second Schedule hereto.

Title.

4. The title shall commence with *etc.*

Requisitions.

5. The Purchasers shall deliver all requisitions on title to the Vendor's solicitors Messrs. —— of —— within twenty-one days after delivery to the Purchasers' solicitors of the abstract of title and in default of or subject only to any such requisitions and objections so made the Purchasers shall be taken to have accepted the title A complete Abstract of Title shall be delivered within fourteen days from the date hereof and if not so delivered the dates for completion and for rescission under the provisions hereof shall be extended by one day in respect of each day's delay in delivering such abstract In relation to the delivery of requisitions time shall be of the essence of the contract.

Vendor's right of rescission.

6. If the Purchasers shall insist on any requisition or objection as to title which the Vendor shall be unable or unwilling on any reasonable ground to remove or comply with the Vendor shall be at liberty notwithstanding any intermediate negotiation in respect of such requisition or objection to give to the Purchasers' solicitors written notice of his intention to rescind this contract specifying in such notice the particulars of the requisition or objection giving rise thereto and unless such requisition or objection is withdrawn within seven days after the delivery of such notice the contract shall thereupon become void If this contract becomes void as last mentioned the Purchasers shall return to the Vendor all abstracts and other papers delivered to them and the Vendor shall repay to the Purchasers the deposit paid by the Purchasers but without any interest or other compensation or payment whatever.

Date for completion.

7. The date for completion of the purchase shall be fourteen days after the expiry of the period of four months specified in Clause 11 hereof or such earlier date as the Purchasers shall appoint by written notice to the Vendor's solicitors delivered at least four days prior to the proposed date for completion.

Conveyance.

8. On payment of the balance of the purchase price the Vendor and all other necessary parties (if any) will execute a proper assurance to the Purchasers of the property The draft of the conveyance shall be delivered to the Vendor's solicitors at least seven days prior to the date fixed for completion of the purchase and the engrossment thereof shall be delivered to the Vendor's solicitors not later than three days before the date fixed for completion.

As to freedom from outgoings and easements.

9. The property is sold free from all tithe rentcharge tithe land tax chief or other rents or manorial incidents fines services or other incidents of tenure and from all easements and public rights or rights of tenants except such if any as are mentioned in the Second Schedule hereto.

Agreement conditional on the completion of contract[s] for purchase of other land required as part of site.

10. This contract is one of —— contracts for the sale and purchase of a site consisting of —— adjacent plots of land The purchases of the said plots of land are intended to be completed concurrently and accordingly the Vendor shall not require the Purchasers to complete the purchase of the land hereby agreed to be sold except concurrently with the completion of the purchase of the other plots of land above mentioned the intention being that if for any reason any vendor under any of the said other —— contracts fails to make a title in accordance with such contract or otherwise to comply with his or her obligations under such contract or to complete the sale of or to give vacant possession of any part or parts of the said other —— plots of land the Purchasers shall be at liberty at any time thereafter notwithstanding any negotiation or litigation to rescind this contract by giving to the Vendor written notice to that effect and any act matter or thing giving the Purchasers the right to rescind [either] [any] of the other contracts above mentioned shall also entitle the Purchasers to rescind this contract PROVIDED that:—

(1) The Purchasers shall be entitled at their option to complete the purchase of the land hereby agreed to be sold

notwithstanding that [either] [any] of the said other —— contracts above mentioned is not completed.

(2) No interest shall be payable by purchasers in respect of any delay in the completion of the purchase of the property hereby agreed to be purchased which shall be occasioned by the default of [either] [any] of the vendors under [either] [any] of the said other —— contracts.

Right for either party to rescind in certain events.

11. (i) Either party shall be at liberty to rescind this contract by notice in writing to the other party at any time after a period of four calendar months from the date hereof if within that period:—

(a) The local authority county council town planning or any other competent authority has not passed the plans and specifications for the erection and user as such of a —— on the said site as submitted by the Purchasers with such variations as the Purchasers may require.

(b) The Purchasers have not obtained the consent in writing of any adjoining owner entitled to rights of light to the erection of the said —— according to the said plans.

(c) The formal release by any person entitled thereto of the benefit of any restrictive covenant affecting the said site or any part thereof has not been obtained so far as is necessary to permit of the erection of the said —— and the user thereof as a ——.

(d) The consent in writing of any person or authority to the construction disconnection connection alteration or deviation of any drain as required by the Purchasers has not been obtained.

Provided that any notice given by the Vendor hereunder shall not become operative for a period of seven days from the date of service thereof and if within that period the Purchasers shall by notice in writing to the Vendor waive all further rights of rescission under the present clause and under clause 10 hereof the Vendor's notice shall be deemed to be withdrawn.

(ii) The Purchasers shall submit the plans and specifications and apply for the letter and consents hereinbefore mentioned with all proper expedition and will use their best endeavours to

obtain the approval of the said plans and specifications and the granting of the said letter and consents.

12. Any notices given by either party to rescind under either of the two preceding clauses shall be duly served if sent by post addressed to the other party at the address above given of such other party Upon any such notice being given the deposit with any interest earned thereon shall be returned to the Purchasers forthwith. Service of notices.

13. As from the date fixed for completion all outgoings shall be discharged by the Purchasers subject as hereinafter provided The outgoings shall for this purpose be apportioned between the Vendor and the Purchasers and the Purchasers shall pay or the Vendor shall allow to the Purchasers as the case may require the apportioned amount due to the Vendor or the Purchasers hereunder. Apportionment of outgoings.

14. If owing to the default of the Purchasers the purchase is not completed on the date fixed for completion the Purchasers shall pay interest on the remainder of the purchase money at the rate of Four Pounds per centum per annum from that day until actual completion of the purchase but the Vendor shall have the option of taking the rents and profits of the property less outgoings up to the date of actual completion in lieu of such interest. Interest in case of default.

15. The Purchasers shall not be bound to take over any insurance policies against fire or other risks in relation to the property hereby agreed to be sold. Purchasers not required to take over insurance policies.

As WITNESS the hands of the said parties the day and year first above written.

THE FIRST SCHEDULE ABOVE REFERRED TO.

[*Property sold.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.

[*Special Conditions.*]

Here set out all special conditions as to title, easements, etc.

Form 8.

Repairing Lease or Underlease of Trade Premises Settled on Behalf of Lessee for Term of Twenty-one Years Determinable at Seventh or Fourteenth Year; Lessor being Responsible for Structure, Roofs and Drains, with Provision for Further Rent in Respect of Works to the Structure, Roofs or Drains; Lessee being Responsible for Interior Repairs and Decorations and External Painting.

Drafted by E. O. Walford, LL.D., Solicitor.

Date. THIS LEASE [*or*, UNDERLEASE] is made the —— day of ——

Parties. One thousand nine hundred and thirty- BETWEEN —— of *etc.* and —— of *etc.* (hereinafter called "the Landlords" which expression where the context so admits shall include the reversioner for the time being immediately expectant upon the term hereby created) of the first part and —— of *etc.* (hereinafter called "the Tenant" which expression where the context so admits shall include his executors administrators and assigns) of the other part

WITNESSETH:—

Demise. 1. In consideration of the rent and covenants hereinafter reserved and contained the Landlords hereby demise unto the

Parcels. Tenants ALL THAT piece of land situate at —— TOGETHER with the messuage premises and outbuildings erected thereon and known or intended to be known as —— which said piece of land [with the dimensions (little more or less) and abuttals thereof] are more particularly delineated and shown on the plan [drawn on these presents [*or* hereto annexed] and thereon coloured pink] EXCEPT AND RESERVED out of this demise—

Exceptions and reservations.

(i) The free passage and running of water and soil coming from any adjoining or neighbouring buildings or lands by and through the channels and drains made or to be made upon or under the said land [the tenant or tenants of such other buildings or lands (or other persons using the same) on request paying his or their share or proportion of the costs of cleansing and repairing the same as need shall require]

(ii) All other easements or rights now enjoyed by or exercised in respect of any adjoining premises over or in respect of the demised premises

(iii) All rights of light or air which would or might interfere with the full and unrestricted use of the adjoining or neighbouring land for building or other purposes of development

TO HOLD to the Tenant from the —— day of —— One thousand nine hundred and thirty- for the term of [twenty-one] years (determinable as hereinafter provided) PAYING therefor during the said term the yearly rent (and so in proportion for any part of a year) of —— by equal quarterly payments on the usual quarter days in every year of which the first shall be made on the —— day of —— One thousand nine hundred and thirty- in each case without any deduction except for Landlords' property tax. Habendum. Reddendum.

2. The Tenant for himself his executors administrators and assigns and to the intent that the obligations hereby created may continue throughout the term hereby created covenants with the Landlords as follows:— Tenant's covenants:

(1) To pay the said rent on the days and in manner aforesaid (1) To pay rent.

(2) To bear pay and discharge all existing and future rates taxes and assessments duties impositions outgoings and burdens whatsoever whether parliamentary parochial local or of any other description assessed charged or imposed upon or payable in respect of the demised premises by the owner or occupier thereof (Landlords' property tax only excepted) and being of an annual or other recurring nature (2) To pay rates and taxes.

(3) Not to make any additions or alterations to any buildings at any time existing on the land hereby demised or the principal walls or timbers thereof except with the consent in writing of the Landlords and in accordance with plans elevations sections and specifications previously approved by the Landlords [and the Superior Landlords] except only such as may be required by any competent authority but such approval shall not be unreasonably withheld (3) Not to make alterations.

(4) To keep demised premises in repair.

(4) To keep the said messuage and premises and all other buildings and erections which may at any time during the said term be erected on the land hereby demised and all additions to such messuage premises and buildings and the Landlords' fixtures therein and the garden walls and fences thereof (but not including the structure roofs or main drains thereof) in good and substantial repair and condition

(5) Additional rent in respect of works to structure roofs or drains.

(5) (i) If the Landlords shall either in accordance with the requirements of any competent authority, or at the request of the tenant execute in a proper and workmanlike manner any works to the existing structure roofs or main drains of the demised premises, or if [owing to the nature or manner of user by the tenant of the demised premises (*a*)] any competent autho-

(*a*) The words in brackets appear to be desirable. If the requirement does not arise out of the trade carried on by the tenant, or some matter connected therewith (*e.g.*, the number of workpeople employed), but from some cause entirely unconnected with such user, it would seem unreasonable to require the tenant to pay an additional rent in respect of the expenses of such works. It is difficult to foresee in what circumstances additions or additional buildings might be required to be made or erected except owing to the nature or manner of user of the premises; but this appears to be no sufficient reason for omitting the qualification suggested. As to shop premises, s. 11 of the Shops Act, 1934, should be referred to as to the apportionment of expenses of certain works mentioned in s. 10 of that Act. It should be noted that the Court has power to direct that any contractual provision shall cease to have effect in so far as it is inconsistent with any order made by the Court as to the apportionment of such expenses.

The Factory and Workshops Acts contain similar provisions as to apportionment of certain expenses, *e.g.*, s. 7 of the Factory and Workshops Act, 1891 (replaced by s. 14 of the Factory and Workshops Act, 1901), imposed upon the owner the obligation in the case of factories employing more than forty persons of providing certain means of escape from upper floors in the case of fire, and sub-s. 2 of that section provided (in effect) that upon an application by the owner to the county court the court might, "notwithstanding any agreement with the occupier", make an order apportioning the expenses between the owner and the occupier as to the court appeared just and equitable. In a case decided under that section, namely, *Horner* v. *Franklin*, [1901] 1 K. B. 479, it was held by the Court of Appeal that the High Court had no jurisdiction to entertain an action by the owner for the recovery from his occupying tenant of the whole of the expenses of providing the necessary fire escape as an "outgoing" for which the tenant was liable under the express terms of the lease. The Court of Appeal was of the unanimous opinion that the county court had exclusive jurisdiction in the matter

rity shall require any additional buildings to be constructed on the land hereby demised or shall require any addition to or alteration or reconstruction of the existing buildings on the said land or

(ii) If in the opinion of the lessors' surveyor any works to the structure roofs or main drains of the demised premises are essential for the preservation of the property according to accepted principles of good estate management and shall be executed in manner aforesaid by the Landlords

then and in either of the said cases the Tenant will as from the completion of such works pay to the Landlords during the subsistence of the term by way of additional rent a yearly sum equal to four per centum of the proper and reasonable expense of such works such additional rent to be paid on the usual quarter days and the first payment to be the due proportion from the date of completion of such works up to the quarter day next following

(6) To paint with two coats at least of good oil paint in a workmanlike manner in every third year of the term hereby granted all the outside wood and metal work of the same and other external parts proper to be painted and all additions thereto and all other buildings during the said term erected on the demised land and proper to be so treated

(6) To paint outside every third year.

(7) To paint in like manner with two coats at least of good oil paint in every seventh year of the term hereby

(7) Inside every seventh year.

---

and must be left to apportion the expenses as appeared to that court to be just and equitable. Vaughan Williams, L.J., in the course of his judgment observed: "No one has suggested that when the county court Judge comes to consider what is just and equitable he is not to bear in mind the terms of the tenancy or of the occupation as between the owner and the occupier. It may be that those terms are such that it would be 'just and equitable' to throw the whole burden of these expenses on the tenant." Further, Romer, L.J., pointed out that "the Legislature did not intend that the terms of the tenancy alone should determine this question, nor did they draw any distinction between those terms when expressed in the form of covenants and when implied by law". Obviously a material factor to be taken into account will be the period of the tenancy which remains unexpired.

granted all the inside wood and metal work of the same and all additions thereto and all other buildings during the term erected on the demised land and proper to be so treated And after every internal painting redecorate the interior of the said messuage and buildings in such manner as to meet the reasonable requirements of a tenant at a rack rent

(8) To repair on receipt of notice.

(8) Within the period of three calendar months from the receipt of any requirement by the Landlords in that behalf to repair any defects or wants of reparation for which the Tenant shall be liable under any of the covenants herein contained

(9) To permit lessor to view.

(9) To permit the Landlords [and the Superior Landlords] and their [respective] agents at all reasonable times to enter upon the demised premises to view the condition of the buildings for the time being erected thereon and for all other reasonable purposes

(10) To permit execution of works.

(10) To permit the Landlords [and the Superior Landlords] and their [respective] agents and the tenants or owners of any land or premises adjoining the demised premises together where necessary with workmen and appliances to enter upon the demised premises to cleanse drains or to execute repairs upon the demised premises or such adjoining premises the Landlords or others so entering making good all damage occasioned to the Tenant thereby

(11) To permit lessor to take inventory.

(11) To permit the Landlords [and the Superior Landlords] and their [respective] agents at all reasonable times during the last six calendar months of the said term (howsoever determined) to enter upon the demised premises and to take an inventory of all landlords' fixtures which at any time prior to or during such term shall have been affixed to the demised premises or any part thereof

(12) To insure against fire risk and also aircraft risk in time of war

(12) To forthwith insure and henceforth keep insured in the joint names of [the Superior Landlords] the Landlords and Tenant all buildings erections and fixtures of an insurable nature from time to time erected or standing

upon or affixed to the demised land against loss or damage by fire in the —— Insurance Company or some other insurance office to be approved in writing by the Landlords in such sum as may from time to time in the opinion of the Landlords be required fully to reinstate the said premises in case of total destruction and also during such time or times as Great Britain is at war with any other State against damage from aircraft or aircraft defences and to pay all premiums necessary for the purposes aforesaid within seven days after the same shall respectively become due and whenever required so to do to produce to the Landlords or their agents the policy or policies of insurance and the receipt for the current year's premium or premiums And in case of damage by fire or aircraft forthwith out of the moneys received by virtue of any insurance and out of his own private moneys if necessary to rebuild repair or otherwise reinstate in a good and substantial manner under the direction and to the satisfaction of the Landlords any premises destroyed or damaged

(13) Not without the approval in writing of the Landlords to use or permit the use of the said messuage or any other buildings that may during the said term be erected on the demised premises or any part thereof for any trade or business other than that of —— nor for the purpose of exhibiting advertisements or signs except such as shall relate to the carrying on of any trade or business permitted by these presents or any other trade or business which the Landlords shall have approved in writing and which approval shall not be unreasonably withheld [if the Superior Landlords are also willing to approve thereof]

(13) Not to use premises except for specified trade or business nor to exhibit signs, etc., except such as relate to permitted trade or business.

(14) Not to do or cause permit or suffer upon the demised premises anything which may be or become a nuisance or annoyance or cause damage to the Landlords [or the Superior Landlords] or their [respective] tenants or the occupiers of neighbouring premises

(14) Not to suffer any nuisance.

(15) Not to assign or underlet without consent.

(15) Not during the said term to assign underlet or part with possession of the demised premises or any part thereof without the consent in writing of the Landlords such consent not to be withheld unreasonably in the event of a respectable and responsible assignee or underlessee being proposed the ground for withholding such consent to be notified by the Landlords to the Tenant in writing within ten days after receipt of a written request by the Tenant in that behalf

(16) To register assignments and underleases.

(16) (*b*) Within one calendar month after the execution thereof to produce to the Landlords' solicitor for the time being any assignment mortgage instrument of transfer or charge or the land certificate showing the dealing probate letters of administration or underlease (except underleases at a rack rent for a term not exceeding three years) of the premises hereby demised [and to pay to him a fee of one guinea for registering the same]

(17) To pay costs of notices as to dilapidations, etc.

(17) To pay all costs charges and expenses (including solicitor's costs and surveyor's fees) incurred by the Landlords for the purpose of or incidental to the preparation and service of any notice under the Law of Property Act 1925 arising out of any breach or nonperformance of any of the covenants hereinbefore contained notwithstanding that forfeiture for such breach shall be avoided otherwise than by relief granted by the Court

(18) To yield up premises at end of term.

(18) At the determination of the tenancy to yield up the demised premises with all buildings erected thereon during the said term and additions thereto and all landlords' fixtures affixed thereto (but not trade fixtures) in such repair and condition as shall be in accordance with the covenants hereinbefore contained.

(*b*) This clause, although sometimes inserted in twenty-one year leases, should, it is submitted, only be insisted upon as a means of obtaining a record of dealings by the tenant with the lease; and as a fee for any licence to assign or underlet will be payable by the tenant even in the case of a short letting it is suggested that where this clause is insisted upon a registration fee should not be required.

3. The Landlords hereby covenant with the Tenant as follows:— Lessor's covenants:

(1) That the Tenant paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on his part contained shall peaceably hold and enjoy the said demised premises during the said term without any interruption by the Landlords or any person rightfully claiming under or in trust for them or by title paramount (*c*) (1) For quiet enjoyment.

(2) To keep in good and tenantable repair the structure (including the internal walls timbers and flooring and the structure of the ceilings) and the roofs and main drains of the building or buildings included in the tenancy and to carry out all main drainage works and structural works including additional buildings or additions to or alterations or reconstruction of existing buildings required by any competent authority (2) To keep structure roofs and main drains in repair.

[(3) (*d*) Duly and punctually to pay the rent reserved by the lease under which the Landlords hold the demised premises and to perform and observe the covenants and conditions therein contained (except in so far as the liability in respect thereof is imposed upon the Tenant by these presents) and to keep indemnified the Tenant from and against all actions proceedings costs damages losses claims and demands arising out of any non-payment of the said rent or the breach or non-performance of the said covenants and conditions or any of them] (3) To pay rent and perform obligations under the head lease.

[(4) On request by the Tenant from time to time to produce or deliver copies of the last-mentioned lease to the Tenant (in each case at the Tenant's own expense) the Landlords hereby undertaking with the Tenant for the safe custody of the said lease during the subsistence of the term hereby granted.]

(*c*) Unless the concluding words are inserted the tenant has no remedy whatever if he is evicted by reason of the faulty title of the landlords.

(*d*) Sub-clauses (3) and (4) are required only in the case of an underlease.

Proviso for re-entry.

4. PROVIDED ALWAYS AND IT IS EXPRESSLY AGREED that if the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any covenant on the Tenant's part herein contained shall not be performed or observed then and in any of the said cases it shall be lawful for the Landlords at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlords in respect of any breach or non-performance of the Tenant's covenants herein contained.

IN WITNESS whereof the parties to these presents have hereunto set their hands and seals the day and year first before written.

Signed sealed and delivered by the before-named in the presence of:

Form 9.

Assent by the General Executors of a Deceased Tenant for Life in Favour of a Remainderman Absolutely Entitled (*a*).

Drafted by B. A. Bicknell, of Lincoln's Inn.

Parties.

THIS ASSENT is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter called "the Personal Representatives") of the one part and Z of *etc.* of the other part

---

(*a*) Stamp if under seal 10s., if under hand no stamp is required; see the Administration of Estates Act, 1925, s. 36 (11). If the assent contains an agreement to indemnify the personal representatives against the liabilities under any lease, such agreement does not operate to attract a 6d. stamp as the revenue authorities regard such an agreement as merely ancillary to the assent. Nor does the acknowledgment for the production of the probate attract any duty. Notice of the assent should be endorsed on the probate.

As the legal estate in settled land devolves on the death of the tenant for life on his general personal representatives, if the property then ceases to be settled land, such general personal representatives must divest themselves of the settled land by assent or conveyance. Generally it will be advisable for such assent to be made in favour of the trustees of the settlement and not, as in this form, in favour of the beneficiary who becomes entitled, as

WHEREAS (*b*) by a vesting deed made the —— day of —— between X and Y of the one part and T L of the other part the hereditaments and premises more particularly described in the First and Second Schedules hereto were declared to be vested in the said T L as to the freehold hereditaments mentioned in the First Schedule in fee simple and as to the leasehold (*c*) premises mentioned in the Second Schedule hereto for all the residue of the terms of years for which the same were respectively held free from incumbrances

Recitals: title of deceased;

AND WHEREAS the said T L died on the —— day of —— and probate of his will dated the —— day of —— was on the —— day of —— duly granted out of the Principal [*or*, District] Probate Registry of the High Court of Justice to the Personal Representatives

death and grant of probate;

[AND WHEREAS (*d*) the Personal Representatives have not previously to these presents given or made any assent or conveyance in respect of the said freehold and leasehold properties]

no previous assent.

---

it is obvious that the trustees of the settlement will know what dealings (if any) there have been with the equitable title and whether the remainderman has charged his interest. The general personal representatives of a tenant for life cannot have this knowledge and therefore should intermeddle with the trusts of the settlement with extreme hesitation. Where, however, the trustees of the settlement request the personal representatives to assent directly in favour of the remainderman, such objections do not arise and the personal representatives can assent. They can also do so where there are no trustees of the settlement in existence and they are satisfied that in fact the remainderman is entitled and there are no subsisting charges. An assent directly in favour of a remainderman has the advantage that it saves a further conveyance by the trustees. Where such an assent is made, no deed of discharge is required under s. 17 of the Settled Land Act, 1925, see s. 110 (5).

(*b*) It is convenient to recite how the legal estate became vested in the deceased tenant for life as after twenty years the recital will become, under s. 45 (6) of the Law of Property Act, 1925, evidence of seisin. If the legal estate vested under the transitional provisions and there was no vesting deed, the settlement under which the life tenancy arose should be recited.

(*c*) This assent is intended to vest all the settled land in the remainderman, both freehold and leasehold; but in many cases it is advisable to have separate assents for the freehold and leasehold properties. As the assents, if under hand only, do not require stamping the cost of employing several assents is not great and it avoids a common title deed, which is always inconvenient.

(*d*) In view of the provisions in the second paragraph to sub-s. 6 of s. 36 of the Administration of Estates Act, 1925, this recital is not of great value but some conveyancers wish for its insertion. It can do no harm.

Testatum. NOW IT IS HEREBY DECLARED [*or*, THIS DEED WITNESSETH (*e*)] as follows:—

Parcels. 1. The Personal Representatives as personal representatives HEREBY ASSENT to the vesting in the said Z of ALL AND SINGULAR the freehold and leasehold properties more particularly described in the First and Second Schedules hereto for all the estate and interest of the said T L at the time of his death (*f*).

Covenant of indemnity. 2. The said Z hereby agrees [*or*, covenants] with the Personal Representatives that the said Z and the persons deriving title under him will at all times hereafter duly pay all rent due or to become due under the several leases specified in the Second Schedule hereto and will also observe and perform all the covenants agreements and conditions therein contained on the part of the lessees to be observed and performed and also will at all times save harmless and keep indemnified the Personal Representatives their respective estates and effects and the estate and effects of the said T L from and against all proceedings costs claims and demands and expenses on account of any omission to pay the said rents or any of them or any breach of the said covenants and conditions.

Acknowledgment as to production of probate. 3 (*g*). The Personal Representatives hereby acknowledge the right of the said Z to the production of the probate of the will of the said T L (possession of which is retained by the Personal Representatives) and to delivery of copies thereof.

AS WITNESS *etc.*

THE FIRST SCHEDULE.

[*To contain particulars of the freehold properties.*]

THE SECOND SCHEDULE.

[*To contain particulars of the leasehold properties.*]

(*e*) If the personal representatives want the beneficiary to enter into covenants of indemnity in respect of the provisions of the lease the assent must be by deed, otherwise a simple assent under hand is sufficient.

(*f*) If the property was subject to incumbrances this should be stated in the recitals and if the personal representatives have created incumbrances for the purpose of raising duty, etc., this should also be recited and the assent must be expressly subject thereto.

(*g*) The endorsement of notice of the assent on the probate makes an acknowledgment of the beneficiaries' right to the production of the probate necessary: *Re Miller & Pickersgill's Contract*, [1931] 1 Ch. 511. If any documents of title are retained by the personal representatives they should also be included in this acknowledgment.

Form 10.

Lease—Power to Tenant to Determine (*a*) Lease.

Provided always and it is hereby agreed that if the Tenant shall be desirous of determining this present lease at the expiration of the first —— or —— years of the term hereby granted And of such his desire shall give —— calendar months' previous notice in writing to the Landlord or leave the same at or send the same by registered letter to his usual or last-known place of abode in England And shall pay all the rent and perform and observe all the covenants hereinbefore reserved and contained and on the part of the Tenant to be paid performed and observed up to such determination then and in such case immediately after the expiration of the said term of —— or —— years as the case may be this present lease and everything herein contained shall cease and be void without prejudice to any claim by the Tenant against the Landlord in respect of any antecedent breach of any covenant or condition herein contained.

(*a*) This power for the tenant to determine his lease is a common form of power which should be added to the repairing lease, Form 8, *ante*, p. 422, and should be inserted generally in leases of this character.

Form 11.

Application for an Office Copy of a Memorial registered in the Middlesex Deeds Registry (*a*).

(Land Registry Form No. Mx. 8.)

Application for an Office Copy of Memorial.

We hereby apply for an office copy of a memorial (and/or plan) the particulars of which are given in the Schedule below.

Signature of Applicant
or his Solicitor.....

Address.....

Date ——.

Schedule of Registration References.

(*a*) The Middlesex Deeds Registry closed on December 31, 1936, and on January 1, 1937, compulsory registration came into force in Middlesex. Since that date, under the provision of the Land Registration Act, 1936, s. 2 (5), no search may be made in the Middlesex Deeds Register except by the Chief Land Registrar or his officers. The Land Registration (Middlesex Deeds) Rules, 1936, have now been made, which deal with the position which has arisen by reason of the closing of the Middlesex Deeds Registry. The rules provide as follows:—

"1.—(1) Every application for—

(a) the registration of a memorial of an instrument registrable pursuant to section 2 of the Land Registration Act, 1936; or

(b) an official search; or

(c) the discharge of a mortgage; or

(d) an office copy of a memorial filed in the Registry;

shall be in writing, enclosed in an envelope addressed to the Middlesex Deeds Superintendent, Lion House, Red Lion Street, High Holborn, W.C.1, and shall be delivered at or sent by prepaid post to that address, and shall be accompanied by the prescribed fee.

(2) An application for an office copy of a memorial shall be in the Form No. Mx. 8 set out in the Schedule to these Rules.

2.—(1) Any deed or other document accompanying an application, which is returnable to the applicant, shall be returned by post on completion of the registration.

(2) Every certificate of the result of an official search and every office copy of a memorial shall be issued by post.

3. The Land Registry (Middlesex Deeds) Rules, 1922, rules 2, 6 and 13

Form 12.

ADDENDUM TO FORM 1, p. 385.

By F. E. Farrer, of Lincoln's Inn,
one of the Conveyancing Counsel to the Court.

Knowing that new inventions in assurances are dangerous, and are never perfected at a first start, in my note to the tentative draft of a new form of strict settlement by will for an extraordinary period which appears at p. 385 in the September number of *The Conveyancer*, I asked for any flaw therein to be pointed out.

On a hint from a learned gentleman I have discovered a flaw which will be met by the underlined words below.

The limitation at p. 388 should be corrected so as to read as follows:—

"to the use of the person born during 'the period' or in ventre at the expiration of the period but born in due time after such expiration who shall for the time being and from time to time during the period or if in ventre as aforesaid within such due time thereafter as aforesaid be ascertained as the heir male of the body of my said great grandfather X B and so that *etc.*"

---

of the Land Registry (Middlesex Deeds) Rules, 1926, and Form No. Mx. 7 in the Schedule thereto shall be revoked.

4. These Rules may be cited as the Land Registry (Middlesex Deeds) Rules, 1936, and shall come into force on the 1st day of January, 1937."

The above form is taken from the Schedule to this Order and should be employed in accordance with rule 1 (2) of the above Order where an office copy of a memorial is required.

Form 13.

Power to Appoint a Trust Corporation as Trustee of a Will. Express Power for Corporation to Charge (*a*).

Drafted by B. A. Bicknell, of Lincoln's Inn.

THE person or persons having power to appoint new trustees hereof may appoint the Public Trustee or a trust corporation to act as trustee or custodian trustee hereof and either alone or in conjunction with any other trustee or trustees.

(A) Any corporation (*b*) appointed to be a trustee of this my will or of any trust hereby created may in the discharge and exercise of its duties and powers hereunder act by its proper officer or officers and shall be entitled to remuneration for its services as trustee (in addition to the customary share of brokerage) in accordance with such scale (not in any respect higher than the scale hereinafter mentioned) as at or prior to its appoint-

---

(*a*) It is frequently difficult for trustees desiring to retire from a trust to find persons willing to accept the trusteeship. It is therefore convenient to insert an express power to appoint the Public Trustee or a trust corporation. It is not strictly necessary to give an express power to appoint the Public Trustee, as under the Public Trustee Act, 1906, such an appointment may be made and when made, the Public Trustee has, under s. 9, power to charge. The advantage of an express power to appoint the Public Trustee is that it makes it clear to the beneficiaries that this is the wish of the settlor. Although on such appointment notice thereof should be served in accordance with the provisions of s. 5 (4) of the Act of 1906, such appointment could not be successfully opposed. The position in regard to the appointment of a trust corporation is somewhat different. Under s. 4 (3) of the Act a trust corporation may be appointed a trustee but the difficulty here is that in the absence of any express power it is not possible to provide out of the capital or income of the trust property for the fees of the corporation. Nor, in the absence of an express power, is it possible to appoint the trust corporation a custodian trustee with power to charge as such: *Forster* v. *Williams Deacon's Bank*, [1935] Ch. 359; *Arning* v. *James*, [1936] Ch. 158. Where there is no express power in the settlement for a trust corporation to charge, unless all the beneficiaries entitled under the settlement concur, application must be made to the Court under s. 42 of the Trustee Act, 1925; see, too, Lewin on Trusts (13th ed.), pp. 609 *et seq.*

(*b*) This clause incorporates the provisions most trust corporations require on appointment as trustee.

ment may be agreed in writing between such corporation and the person or persons making such appointment or (in default of such agreement) in accordance with the corporation's published scale of fees or remuneration current at the date of its appointment

(B) If such corporation (*c*) be a bank then in connection with the administration of my estate or the execution or exercise of any trust or power and without being liable to account for any profit thereby made such corporation may retain as bankers on current or deposit account or advance any moneys necessary or convenient to be retained or advanced and may otherwise act as bankers and transact any banking or allied business and for so doing such corporation shall be entitled to be allowed and paid such charges expenses interest and commission as it would in similar circumstances charge an ordinary customer in the ordinary course of its business

(C) All benefits (*d*) by this clause provided for any corporation shall be free from death duties and deductions and the remuneration of any corporation or of the Public Trustee shall be provided as to income fees out of income (*e*) and as to all other charges out of capital and every annuity hereunder shall during its duration bear its rateable share of the income fee payable in respect of the income out of which the same is payable.

(*c*) This clause contains all the provisions the big banks are accustomed to require before accepting in their capacity of trust corporation, the trusteeship of any settlement.

(*d*) A power to charge for services, if inserted in a will, is a legacy which attracts death duty: Williams on Executors (12th ed.), p. 1216; *Re Thorley*, [1891] 2 Ch. 613; *Re White*, [1898] 1 Ch. 297; 2 Ch. 217; *Re Brown*, [1918] W. N. 118.

(*e*) The recent decisions of *Re Hulton, Midland Bank Executor & Trustee Co.* v. *Thompson*, [1936] Ch. 536; and *Re Riddell, Public Trustee* v. *Riddell*, [1936] W. N. 259, make it clear that unless there is an express provision the income fees of the Public Trustee and of a trust corporation are, in the case of settlement created by will, administration expenses payable out of residue. These decisions appear, in effect, to overrule *Re Bentley*, [1914] 2 Ch. 456.

Form 14.

Deed of Exchange of Freehold Land, one of the Parcels Given in Exchange being Subject to a Debenture Trust Deed, the Debenture Trustees being Joined to Release those Parcels and Taking a New Demise of the Land Received in Exchange (*a*).

Drafted by the General Editor.

Date. THIS DEED OF EXCHANGE is made the —— day of —— 19—

Parties. BETWEEN —— of *etc.* (hereinafter called "the First Company") of the first part —— of *etc.* (hereinafter called "the Second Company") of the second part and —— of *etc.* and —— of *etc.* (hereinafter called "the Trustees") of the third part

Recitals:

(1) Ownership of parcels to be exchanged; WHEREAS

(1) The First Company are the Estate Owners in respect of the fee simple in possession of the land coloured [pink] on the plan hereto free from incumbrances and the Second Company are the Estate Owners in respect of the fee simple of the property coloured [yellow] on the said plan subject only to the charge hereinafter mentioned

(2) Debenture trust deed and power therein contained as to release of property subject thereto;

(2) By a debenture trust deed (hereinafter called "the trust deed") dated —— and made between the Second Company of the one part and the Trustees of the other part the property therein mentioned was conveyed UNTO [and to the use of] the Trustees in fee simple upon the trusts and for the purposes therein mentioned and by clause —— of the said deed power was given to the Trustees at any time before they should have made entry to enforce their security to release from the security any part of the mortgaged property upon the condition or in consideration of other hereditaments being substituted for the hereditaments so to be released and being assured to the Trustees upon the like trusts and provisions as therein expressed concerning the thereby mortgaged premises such hereditaments being in the judgment of the Trustees of a value as great as the hereditaments released

(*a*) Stamp 10s.

(3) The Trustees are the present trustees of the trust deed and the supplemental trust deed next hereinafter recited (3) That Trustees are trustees for Debenture Holders;

(4) By a supplemental trust deed dated —— and made between the Second Company of the one part and the Trustees of the other part after reciting (*inter alia*) that the supplemental trust deed was supplemental to the trust deed the Second Company demised (*inter alia*) the property shown on the plan hereto and thereon coloured yellow unto the Trustees for the term of —— years from the date thereof as part of the specific security for the said debenture stock and upon the trusts and with and subject to the powers and provisions by and in the trust deed declared and contained concerning the mortgaged premises and it was thereby declared that the trust deed should be read in conjunction with the deed now recited and thenceforth have effect as thereby modified and as far as practicable as though all the provisions thereof had originally been contained or embodied in the trust deed (4) Supplemental Trust Deed;

(5) The First Company and the Second Company have agreed to exchange the said pieces of land coloured pink and yellow on the said plan (forming part of the property of which they are respectively estate owners as aforesaid) and the Trustees not having made any entry into or upon the property the subject of their security for the purpose of enforcing their security or otherwise and being satisfied that the said pieces of land are of equal value have agreed to join in these presents for the purpose of releasing the land coloured yellow on the said plan from the charge created by the said trust deed and supplemental trust deed in exchange for the said land coloured pink. (5) Agreement for exchange.

Now in pursuance of the said agreement and in consideration of the conveyance in exchange hereinafter made and of the premises THIS DEED WITNESSETH as follows:—

1. THE First Company as Beneficial Owners hereby grant to the Second Company ALL THAT piece or parcel of land —— which said piece or parcel of land is more particularly delineated on the plan hereto annexed and thereon coloured pink TO HOLD unto the Second Company and their assigns in fee simple. Grant by First Company to Second Company.

2. THE Second Company as Beneficial Owners hereby demise unto the Trustees ALL THAT piece or parcel of land lastly herein- Demise by Second Company to Trustees.

before described To HOLD unto the Trustees for the term of —— years from the date hereof upon the trusts and subject to the powers and provisions in the trust deed contained and declared.

Grant by Second Company to First Company.

3. THE Second Company as Beneficial Owners hereby grant and the Trustees as Mortgagees by direction of the Second Company and to the intent that the mortgage term shall merge in the freehold reversion of the property hereby assured and coloured yellow on the said plan assign surrender and release Unto the First Company ALL THAT —— To HOLD Unto the First Company and their assigns in fee simple.

Acknowledgment by Trustees and Second Company as to deeds retained.

4.—(a) THE Trustees hereby acknowledge the right of the First Company to the production of the documents mentioned in the First Schedule hereto and to delivery of copies thereof

(b) THE Second Company as to the deeds last mentioned hereby covenant with the First Company that upon such deeds or any of them coming into their possession or control the Second Company will forthwith upon request by the First Company give to the First Company the usual statutory acknowledgment and undertaking in respect thereof and that in the meanwhile and pending such acknowledgment and undertaking the Second Company shall as from the date when such documents shall come into their possession or control be under the same liability as if such statutory acknowledgment and undertaking had actually been given to the First Company.

Acknowledgment by First Company as to deeds retained.

5. THE First Company hereby acknowledge the right of the Second Company to the production of the deeds mentioned in the Second Schedule hereto and to delivery of copies thereof.

IN WITNESS whereof the parties hereto have hereunto caused their respective common seals to be affixed the day and year first before written.

THE FIRST SCHEDULE ABOVE REFERRED TO.

[*Deeds retained by the Trustees.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.

[*Deeds retained by the First Company.*]

Form 15.

Grant of Perpetual Yearly Rentcharges out of Land subject to Legal Mortgage with Concurrence of Mortgagee (*a*).

Drafted by David Blank, LL.B., Solicitor.

THIS DEED OF GRANT is made the —— day of —— 19— BETWEEN —— of *etc.* (hereinafter called "the Vendor") of the first part —— of *etc.* (hereinafter called "the Mortgagee") of the second part and —— of *etc.* (hereinafter called "the Purchaser") of the third part

WHEREAS—

(1) The Vendor is the estate owner in fee simple in possession of a plot of land situate *etc.* Subject to the legal charge hereinafter recited and subject also as hereinafter mentioned

(2) By a legal charge dated —— made between the Vendor of the one part and the Mortgagee of the other part the said plot of land was together with other property charged by way of legal mortgage for securing the payment to the Mortgagee of the moneys therein more particularly mentioned

(3) The Vendor has agreed with the Purchaser for the creation and sale to him of the —— several perpetual yearly rentcharges of £—— each hereinafter described and intended to be hereby granted to be created out of parts of the said plot of land and to be secured in manner hereinafter appearing at the price of £——

(4) Upon the treaty for the said sale it was agreed that the said purchase-money of £—— should be paid to the Mortgagee on account of the principal interest and other moneys secured by the said legal charge as aforesaid and that the Mortgagee in consideration thereof should join herein in manner hereinafter appearing

---

(*a*) The circumstances of this transaction were peculiar but may easily recur. The vendor, a builder, had five newly built shops for sale and proposed on each sale to reserve a chief rent of £10. The land on which the shops stood was together with other property mortgaged to his bank. Before the shops were sold an offer was received for the five chief rents. This was accepted with the consent of the bank, and the object of this deed is to create and grant the five chief rents in one document, taking care that each chief rent should be charged only on one particular shop and not on all five.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser by the direction of the Vendor to the Mortgagee on account of the principal interest and other moneys secured by the said legal charge (the receipt and payment of which sum the Mortgagee and the Vendor hereby respectively acknowledge) the Vendor as beneficial owner and the Mortgagee as mortgagee as to all their respective estates and interests in the said land hereby grant FIRST one perpetual yearly rentcharge of £—— to be for ever charged upon issuing and payable out of ALL THAT plot of land *etc.* more particularly delineated and coloured —— on the plan hereto annexed and thereon marked A SECONDLY one perpetual yearly rentcharge *etc.* marked B *etc.* ALL which several perpetual yearly rentcharges are to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— respectively in every year free from all taxes and deductions whatsoever except income tax the first of such payments or a proportionate part thereof to be made on the —— day of —— next TO HOLD the said several perpetual yearly rentcharges unto the Purchaser in fee simple to the intent that the said respective perpetual rentcharges may have priority over the said legal charge.

2. THE Vendor hereby covenants with the Purchaser and as a separate covenant with the Mortgagee that the Vendor and the persons deriving title under him will at all times hereafter pay to the Purchaser and the persons deriving title under him the said several yearly rentcharges at the times and in manner hereinbefore appointed for payment thereof And will also pay all rates taxes assessments impositions and outgoings now or hereafter to be taxed charged or assessed upon each of the plots of land upon which the yearly rentcharges hereby granted are charged and will at all times hereafter maintain upon each of such plots a shop messuage or dwelling-house and other buildings AND will at all times hereafter keep the shop messuage or dwelling-house and other buildings now standing and being upon each of the said respective plots (*b*) of land in good and tenantable repair and condition so long as the same will stand and when the same shall become ruinous and as often as occasion

shall require will rebuild the same or erect another shop messuage or dwelling-house in lieu thereof and of the like materials and of the like annual value and so *toties quoties* to the intent that there shall at all times hereafter be upon each of the said respective plots of land (*b*) a shop messuage or dwelling-house and other buildings of the like annual value as aforesaid AND will at all times hereafter keep insured against loss or damage by fire each building and erection of an insurable nature which now is or at any time hereafter may be erected on or affixed to each of the said respective plots (*b*) of land in the amount of three-fourths at least of the full value thereof in some insurance office of repute and will whenever required produce to the Purchaser and his successors in title the policy of such insurance and the receipt for the last premium thereof And in case the property or any part thereof shall at any time hereafter be destroyed or damaged by fire then and so often as the same shall happen all moneys received in respect of such insurance shall with all convenient speed be laid out in rebuilding repairing or otherwise reinstating the same property in a good and substantial manner.

3. IT IS HEREBY DECLARED AND AGREED by and between the Vendor and the Purchaser that (in addition to and not by way of exclusion of and subject to the statutory powers and remedies conferred on the Purchaser by section 121 of the Law of Property Act 1925 or any statutory modification extension or re-enactment thereof) the deed of grant herein contained is on the express condition that if at any time any one of the said yearly rentcharges hereby reserved or any part thereof shall at any time during the life or lives of any child or other issue now living of His late Majesty King Edward VII and the survivor or survivors of such child or issue and within twenty-one years after the death of any such survivor as aforesaid and during such further period (if any) as may not be contrary to the law for preventing perpetuities be in arrear in the whole or in part for one year next after any of the days hereby appointed for payment

---

(*b*) The object of drafting the covenant in this form is to achieve the effect of five separate covenants, one in respect of each shop, so that the purchaser of each shop shall not be affected by anything done or omitted to be done by the purchaser of another shop.

thereof whether the same shall have been legally demanded or not and no sufficient distress shall be found on the plot of land charged therewith to satisfy the same or if at any time or times hereafter default shall have been made in the observance and performance of the covenants and conditions on the part of the Vendor hereinbefore contained then and in any of the said cases it shall be lawful for the Purchaser or the persons deriving title under him at any time thereafter and notwithstanding the waiver of any previous default into and upon the said plot of land charged therewith or any part thereof in the name of the whole absolutely to enter (*c*) and the same premises peaceably to hold thenceforth as owner or owners in fee simple subject nevertheless to the said legal charge (*d*) and the principal interest and other moneys thereby secured without prejudice to any rights of action or remedy in respect of any antecedent breach of any of the covenants by the Vendor hereinbefore contained Provided always (*e*) that nothing herein contained shall by implication or otherwise be construed as conferring upon the Purchaser any right of action distress entry or other remedy against the owner for the time being of one of the said respective plots of land or against any one of the said respective plots of land by reason only of any default being made by the owner for the time being of any other or others of the said respective plots of land.

4. Nothing herein contained (*f*) shall by implication or otherwise impose on the Mortgagee any personal obligation for payment of the yearly rentcharges hereby created or any of them or any part or parts thereof.

5. The covenants (*f*) and provisions in the said legal charge contained shall remain of full force and effect in respect of the property comprised therein.

6. [*Usual acknowledgment for production by mortgagee.*]

(*c*) There can of course be no power of re-entry in these circumstances as the land itself was never owned by the purchaser of the chief rents.

(*d*) This is necessary for the protection of the mortgagee, although not every purchaser in these circumstances would consent to it.

(*e*) The object of this proviso is to make it quite clear that on a breach of covenant by the owner of one shop the owners of the other shops shall not be prejudiced in any way.

(*f*) These clauses are inserted for the better protection of the mortgagee.

Form 16.

Agreement for the Hire of a Caravan Trailer (*a*).

Drafted by E. J. Sadler, M.A., LL.B., Solicitor.

AN AGREEMENT made this —— day of —— 19— BETWEEN —— of *etc.* (the Owner) of the one part and —— of *etc.* (the Hirer) or the other part.

1. THE Owner agrees to let and the Hirer agrees to hire the caravan trailer and contents as specified in the Schedule hereto belonging to the Owner from —— a.m. [p.m.] on the —— day of —— 19— to —— a.m. [p.m.] on the —— day of —— 19— for the sum of £——. A deposit of £—— shall be paid prior to the signing of this agreement and the balance on the —— day of —— 19—.

2. THE Hirer shall be responsible for all damage to or loss of the trailer and contents however caused fair wear and tear and depreciation alone excepted.

3. THE Hirer shall insure the trailer and contents against damage or loss and against third party risks in accordance with the Road Traffic Acts and shall produce to the Owner satisfactory evidence of such insurance before taking possession of the trailer.

4. THE Hirer has examined the trailer and contents and satisfied himself as to their condition and no warranty is given by the Owner.

5. THE Hirer shall not (a) use or permit to be used the trailer and contents in any way contrary to law (b) draw or permit to be drawn the trailer and contents at a speed exceeding twenty miles per hour and (c) carry or permit to be carried thereon more than —— persons or any load exceeding —— cwt. (including passengers).

6. THE Hirer shall not part with the possession of the trailer or contents during the period of hire and shall return the same to the Owner's premises at the termination thereof.

Signature of Hirer.....

Signature of Owner.....

THE SCHEDULE ABOVE REFERRED TO.

(*a*) Stamp, *ad valorem* on balance of hire charge.

Form 17.

Will of Solicitor Disposing of his Practice, with Provisions Enabling a Son, when Duly Qualified, to Take Over the Business (*a*).

Drafted by B. A. Bicknell, of Lincoln's Inn.

I, A of *etc.* Solicitor DECLARE THIS TO BE MY LAST WILL which I make this —— day of —— 19—

Revocation of earlier wills.

1. I hereby revoke all testamentary dispositions heretofore made by me.

(*a*) This form is intended to meet the case of a solicitor who, having no partners, desires to leave his practice as solicitor in such a manner that his son, when duly qualified, may take it over. A solicitor's business can only be carried on in accordance with the provisions of the Solicitors Act, 1932, and the restrictions in this Act make a bequest of such a business, when it is not to be vested immediately in a solicitor legatee, a matter of considerable difficulty. This form contains suggestions for dealing with the business pending a son becoming qualified to take it over. This form and notes only apply to a solicitor's business but it can be adapted for use in the case of other professional businesses, such as that of a doctor, where, owing to restrictions imposed either by statute or by professional etiquette, it is not possible for the testator's executors, or trustees especially appointed, to be given power to manage the business until a beneficiary becomes absolutely entitled to it. There can be no doubt but that the ultimate transfer of a deceased's interest in a professional business is greatly simplified if the deceased has admitted some person as a partner during his lifetime upon terms which specify the rights of a son. Where this has not been done, somewhat complicated provisions become necessary for the interim management of the business.

What a solicitor wants in a case of this character is for the business to be kept going until his son is qualified, without any stranger acquiring any interest in it. It is not possible to give effect to this desire, for two reasons: First, it is clear that, if the testator appoints executors who are not qualified to act as solicitors, they cannot carry on the business (s. 43 of the Act of 1932), though such executors can wind up the business. Secondly, it is not possible to appoint solicitors, either as executors or special trustees, to carry on the business as agents for the estate for the interim period. This latter course is prohibited by s. 51 of the Act, which provides that:—

"No solicitor shall wilfully and knowingly act as agent in any action, or in any matter in bankruptcy for any unqualified person, or permit his name to be made use of in any such action, or matter upon the account, or for the profit, of any unqualified person, or send any process to any unqualified person, or do any other act enabling any unqualified person to appear, act or practice in any respect as a solicitor in any such action or matter."

It seems clear that this section absolutely precludes a trustee solicitor from carrying on the business, as opposed to winding it up, for the benefit of the deceased's estate. The result is that it is necessary, if the business is to be kept going, that it should be immediately transferred to some

2. I appoint my Wife X and Y of *etc.* to be executors and trustees of this my will and I DECLARE that the expression "my Trustees" shall include the said X and Y and the survivor or survivors of them or other the Trustee or Trustees for the time being of this my will. Appointment of executors.

3. WHEREAS I am carrying on the profession of Solicitor at —— in the county of —— under the firm name of —— and I am desirous that my son Z (who is now under the age of twenty-one years) shall have an option to be my successor in my practice should he duly qualify as a Solicitor and wish to do so Now I HEREBY devise and bequeath to my Trustees the freehold [leasehold] premises known as —— situate at —— upon which my said practice of Solicitor known as —— is now carried on by me and the office furniture books boxes safes and fittings therein and all other chattels used in the said practice and the goodwill (*b*) thereof and all book debts and moneys due to me in respect thereof or standing to the credit of my office account (*c*) at my bankers at my death (which said premises chattels moneys and effects are hereinafter called "my practice") upon trust (*d*) to sell the same and to hold the proceeds of sale upon the trusts and subject to the powers and provisions hereinafter declared. Gift of practice.

4. PROVIDED ALWAYS and I hereby declare that without prejudice to the foregoing trust for sale I desire my Trustees to sell Provisions for sale.

---

solicitor who will carry it on, independently, not as agent of the executors, and who will take the son into partnership, or transfer the business to him, when he is of age to take over its management. Such a scheme is to be found in this form. It must be modified to meet the requirements of any particular business and it is apprehended that it will be useful rather as indicating the lines on which such a scheme may be formed than as settling the details.

(*b*) It has been said that a solicitor's business has no goodwill (*Arundel* v. *Bell*, 52 L. J. Ch. 539, *per* Jessel, M.R., but see *Fitch* v. *Dewes*, [1921] 2 A. C. 158. At any rate, it has something so closely resembling goodwill and which has a market value (*Burchill* v. *Wilde*, [1900] 1 Ch. 551) that, in a bequest of this character, it is advisable to mention goodwill, in order that it may be clear that the privilege of taking over the business, as distinguished from the premises and furniture and effects, is to be included in the gift.

(*c*) This clause must be carefully considered with a view to including all the assets the testator intends to pass.

(*d*) There should be an express trust to sell, otherwise some question may arise whether any land used by the partnership is caught by the Settled Land Act, 1925.

my practice if possible and as far as may be upon the terms and subject to the following provisions:—

(1) My Trustees shall in the first place offer my said practice to my managing clerk B (*e*) upon the terms hereinafter specified and in the event of the said B refusing to purchase the practice I direct my Trustees to offer the said business to any solicitor they may approve such solicitor not being less than thirty-five years (*f*) of age and having not less than —— years' professional experience.

(2) The consideration (*g*) for the sale of my practice shall be a covenant by the purchaser with my Trustees either to pay to my Trustees the sum of £X per annum by equal half-yearly payments for —— years from the date of such sale or to make such other annual payments calculated in such manner as my Trustees shall think fit.

(3) The purchaser (*h*) shall be required to enter into the following covenants with my Trustees:—

(a) A covenant (*i*) to carry on my practice at —— under the name of —— and not to sell the same or to take in any additional partner without the consent in writing of my Trustees until the

---

(*e*) If the testator has anyone in mind who might take over the business it is advisable for him to be named here as it will assist the executors. It may be that a legacy to the clerk conditional on his purchase of the business might induce him to make the purchase.

(*f*) If the son is too young to be a partner before the testator dies, it is advisable to endeavour to obtain a purchaser of some experience.

(*g*) If the purchaser is to be persuaded to resell a share in the business to the son in accordance with the provisions of clause 4 (3) (c), it is advisable to make the annual payments extend for a period considerably beyond the date when the son will wish to join the business, so that the release of the unpaid instalments of the purchase price may be an inducement to a purchaser to take the son into the business.

(*h*) As the success of this scheme must depend on the purchaser of the practice keeping it going for the son, it is necessary that on the sale covenants should be exacted which will preclude the purchaser from taking steps which may lessen the value of the business. This clause is not strictly necessary, as the terms of the sale might be left to the trustees, but it seems advisable for their protection to indicate the lines on which their discretion is to be exercised, as, if this is not done, the fact that they are not selling the business for the best price in cash might be questioned.

(*i*) There appears to be no objection to this, and it seems necessary in order to prevent the purchaser parting with the practice to a solicitor who might not be a suitable person to maintain its prestige for the son.

said annual sums payable as purchase-moneys as aforesaid have been duly paid and satisfied.

(b) A covenant (*k*) that in the event of the purchaser ceasing to carry on my practice at —— he will not for five years after so ceasing to practise carry on the profession of a solicitor within —— miles of ——.

(c) A covenant (*l*) that in the event of my said son Z becoming a duly qualified solicitor and of my Trustees nominating him in writing on or before the —— day of —— as a partner in my practice that the purchaser will accept the said Z as a partner and on the said Z executing a proper deed of partnership will assign to him a one-half share in the said practice the purchase price for such one-half share being £—— [alternatively (in the event of the purchaser not desiring to enter into a partnership with my said son) that he will sell my practice to my son at such a sum as shall be agreed with my Trustees or in default of such agreement as shall be fixed by an arbitrator being a solicitor to be nominated by the President of the Law Society for the time being].

Trust of proceeds of sale.

5. My Trustees (*m*) shall stand possessed of the said annual sums being the purchase-moneys to arise from the sale of my practice upon trust at their discretion to pay or apply such part or parts thereof towards the maintenance education or benefit of my said son Z as if the same were income and subject thereto to invest the same and the income thereof and to hold the said investments and accumulations upon trust for my said son Z if and when he shall attain the age of twenty-five years absolutely—PROVIDED

(*k*) This is necessary to prevent the purchaser ruining the son by setting up a rival firm immediately the son wishes to take over the practice.

(*l*) The whole success of the scheme must depend on the purchaser undertaking to allow the testator's son to become a partner. The exact form of this clause must depend on the age and circumstances of the son and when it is contemplated he will wish to take over his interest. The words in brackets should be considered. It may be that no solicitor would agree to enter into a contract containing such a provision. Its insertion in the will does not of course preclude the executors from omitting it from any agreement for sale of the practice and its insertion in the will might be useful in negotiation.

(*m*) Some trusts must be declared of the purchase-moneys. It may be that they should fall into residue, but if this is to be the case some provision must be made for providing capital to buy the son's rights in the business.

ALWAYS that in the event of my said son being desirous of becoming a partner in or purchaser of my practice my Trustees shall have power to employ any purchase-money then in their hands and any investments representing accumulations of such purchase-moneys in the purchase of a share or the whole of my practice for my said son as the case may be and they shall release any sums remaining owing by the purchaser of my practice in consideration of such sale to my said son and any purchase-money so applied or released shall become the absolute property of my said son notwithstanding the fact that at the date of such purchase he may not have attained the age of twenty-five years.

Powers of trustees.

6. I hereby empower (*n*) my Trustees to make such arrangements as they may think fit as to the terms and the manner upon which my said son shall become a partner in my practice or acquire the whole of it and I declare that the directions I have given in clause 4 hereof are not intended to be legally binding upon my Trustees but are set out for their guidance and as a statement of my wishes and I authorise my Trustees to vary the terms of such sale if they should consider it expedient and to accept less than the market value of my practice if by so doing they are of opinion that they can obtain as purchaser a solicitor whom they consider would be a suitable partner for my said son and who in their judgment will preserve the practice for him and I further declare that my Trustees shall not be chargeable or responsible for any loss occasioned by the manner or the terms upon which they shall sell or deal with my practice and in particular they shall not be answerable for the fact that they may not obtain the best price or for the fact that any purchaser fails to give to my son such a share of my practice as these provisions are intended to secure for him or by reason of the fact that it may be necessary to sell my practice without reserving any power for my son subsequently to become a partner therein.

7. [*Gift of residue and other usual provisions.*]

IN WITNESS *etc.*

(*n*) It is important to give the trustees the widest discretion. Owing to the nature of a solicitor's business and the fact that it is not possible to keep it going for the son by the employment of agents and servants, it is essential that the trustees should have the widest powers and be adequately protected should their efforts fail to preserve the practice for the son.

Form 18.

Investment Clause Designed to Permit a Very Wide Scope of Investment (*a*).

Drafted by A. H. Withers, of Lincoln's Inn.

(A) Any moneys requiring investment hereunder may be invested by the Trustees in the names or under the legal control of the Trustees (i) in the purchase or upon the security of any stocks funds shares debentures obligations securities investments policies of assurance or other property (whether real or personal movable or immovable) of whatsoever nature and in whatever part of the world the same may be situate or arise and whether involving liability or not or (ii) in the purchase or upon the security of any estate or interest whatsoever whether present or future (including estates or interests that cease on death or any other event or are determinable or defeasible in any manner or are in reversion whether vested or contingent or are mere expectancies) in any property hereinbefore authorised to be purchased with or without a policy of assurance against such cesser or determination or other risk affecting the same (iii) upon personal credit with or without security or (iv) in effecting any policy or policies against cesser failure or determination (by death or otherwise) or other risk affecting any property estate or interest purchased and any such policy may be effected in such office at a single premium or at such premiums constant or variable payable during such period with or without participation in profits and generally with such provisions as the Trustees may think fit.

(B) Any investment on the security of any property estate or interest may be made subject to any prior charges and incumbrances or to any stipulation for the continuance of the loan for any term certain (however long) and may be made

(*a*) This form will be found useful where the settlor or testator has absolute confidence in the trustees but is far too wide to be used generally.

in conjunction with any other person or persons by way of contributory mortgage to be taken in the joint names of the contributories to the loan or any of them or in the names of any persons (not being less than three in number) as trustees for such contributories or otherwise as may be deemed expedient.

(C) The Trustees may vary or transpose any investments into or for any other or others of any nature hereinbefore authorised and may carry on or concur in carrying on any business which or a share or interest in which is acquired by or mortgaged to the Trustees under the powers of this clause.

(D) The Trustees shall hold all real or immovable property purchased by way of investment upon trust to sell the same with the like power to postpone such sale and with the like interim powers of leasing and management and otherwise as are by law conferred upon trustees holding freehold or leasehold land in England upon trust for sale.

(E) The duties and powers of the trustees under this clause shall be carried out and exercised by the Trustees at their absolute discretion and in the same manner and with the same freedom from responsibility in all respects as if they were absolutely and beneficially entitled to the aforesaid moneys and the investments representing the same.

(F) The premiums on any policies of assurance acquired or effected under this clause shall be paid out of the income of property held on the same trusts as the moneys applied in acquiring or effecting the same.

Form 19.

Conveyance by Separate Sets of Trustees of Two Parcels of Land held on different Charitable Trusts, part of the Land being Subject to Manorial Rights (*a*).

Drafted by Sidney Kaye, LL.B., Solicitor, of Huddersfield.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN the X Union of *etc.* (hereinafter called "the Union") of the first part A of *etc.* and B of *etc.* (hereinafter called "the Trustees") of the second part and C of *etc.* (hereinafter called "the Purchaser") of the third part — Parties.

WHEREAS— — Recitals :

(A) THE Union (who are a trust corporation within the meaning of the Law of Property Act 1925) are seised of or otherwise well entitled to the lands and property described in Part I of the First Schedule hereto for an estate in fee simple in possession free from incumbrances and hold the same on charitable trusts for the purposes of the Union (which are not educational) — Estate of charity;

(B) BY an order made by the Board of Charity Commissioners for England and Wales on the —— day of —— 19— in the matter of the charity consisting of the said lands and property and in the matter of the Charitable Trusts Acts 1853 to 1925 the Union were authorised within twelve calendar months from the date thereof to sell the said lands and property for not less than the sum of £—— and to do and execute all proper acts and assurances for carrying the sale into effect — order of Charity Commissioners;

(C) THE Union have agreed with the Purchaser for the absolute sale and transfer to him at the price of the said lands and property and the fee simple thereof in possession subject as in the said order and hereinafter mentioned but free from incumbrances — agreement for sale;

(*a*) **Stamp,** ***ad valorem.***

estate of trustees;

(D) THE Trustees are seised of the lands and property described in Part II of the said First Schedule (which lands or property were formerly copyhold of the Manor of —— in the County of —— and were enfranchised by the Property Acts 1922 and 1924) for an estate in fee simple in possession subject to the rights of the Lord of the said manor in or to any mines or minerals in or under the said lands and the sporting and other rights franchises royalties or privileges affecting the same and preserved by the said Property Acts, 1922 and 1924 (which said rights franchises royalties and privileges have not been acquired by the Trustees and are hereinafter collectively referred to as "the Lord's subsisting rights") but free from incumbrances and hold the same lands and property on charitable trusts for the purposes (which are not educational) and as part of the estate of a charity known as —— whereof the Trustees are the duly constituted managing trustees

order of Charity Commissioners.

(E) BY an order made by the said Board on the —— day of —— 19— in the matter of the last-mentioned charity and in the matter of the said Charitable Trusts Acts the Trustees were authorised within twelve calendar months from the date thereof to sell the said lands and property described in Part II of the said First Schedule for not less than the sum of £—— and to do and execute all proper acts and assurances for carrying the sale into effect

Agreement for sale.

(F) THE Trustees have agreed with the Purchaser for the absolute sale and transfer to him at the price of £—— of the said land and property described in Part II of the said First Schedule and the fee simple thereof in possession subject to the Lord's subsisting rights but free from incumbrances

Testatum.

NOW THIS DEED WITNESSETH as follows:—

1. THIS deed is made in pursuance of the said agreements and in consideration of the sum of £—— to the Union and the sum of £—— to the Trustees on or before the execution hereof respectively paid by the Purchaser (the receipt of which respective sums the Union and the Trustees hereby respectively acknowledge).

2. THE Union as trustees hereby grant and convey unto the Purchaser ALL THAT piece of land and property described in

Part I of the said First Schedule To HAVE AND TO HOLD the same unto the Purchaser in fee simple.

3. THE Trustees as trustees hereby grant and convey unto the Purchaser ALL THAT piece of land and property described in Part II of the said First Schedule To HAVE AND TO HOLD the same piece of land and property unto the Purchaser in fee simple subject to the Lord's subsisting rights.

4. THE Union hereby acknowledge the right of the Purchaser to production of the documents specified in Part I of the Second Schedule hereto (the possession of which documents is retained by the Union) and to delivery of copies thereof and the Trustees hereby acknowledge the right of the Purchaser to production of the documents specified in Part II of the Second Schedule (the possession of which documents is retained by the Trustees) and to delivery of copies thereof.

IN WITNESS etc.

FIRST SCHEDULE.

PART I.

[*To contain particulars of the first charity's land.*]

PART II.

[*To contain particulars of the second charity's land.*]

SECOND SCHEDULE.

PART I.

[*To contain particulars of the first charity's documents of title.*]

PART II.

[*To contain particulars of the second charity's documents of title.*]

Form 20.

Deed of Covenant to Pay an Annual Sum to a Charity for a Period Exceeding Six Years (Short Form) (*a*).

Drafted by B. A. Bicknell, of Lincoln's Inn.

I —— of *etc.* hereby covenant with the X Association of *etc.* that for a period of eight years from the —— day of —— or during my life, whichever period shall be the shorter I will pay annually to the said Association such a sum as will after the deduction of income tax at the rate for the time being in force amount to the sum of £—— such sum to be paid from my general fund of taxed income.

In witness *etc.*

(*a*) This deed is to be stamped as a mortgage bond or debenture covenant; that is to say, the stamp is 3d. for every £10 secured. To ascertain the stamp payable multiply the sum named in the deed by the number of years for which it is payable and the stamp will be 3d. for every ten pounds of such total sum.

This deed is intended for use by annual subscribers to charities. It is intended to comply with the provisions of s. 20 (1) (b) of the Finance Act, 1922. The provisions of this sub-section are not affected by the Finance Act, 1936, and the annuity will not be deemed for income tax purposes to be the income of the covenantor. The charity therefore will be able to obtain repayment of the tax paid by the covenantor.

The period chosen must be one which will exceed six years. It is best to make the payment for eight years, as it is possible to covenant to pay for seven years and yet make the last payment within six years of the first payment: *Inland Revenue Commissioners* v. *St. Luke's Hostel Trustees Registered* (1930), 144 L. T. 50.

A power of revocation with consents must not be added in view of the provisions of the Finance Act, 1936, s. 19.

The last paragraph of the note (which appeared in our previous issue on p. 456), referring to the Finance Act, 1936, s. 19, should be deleted. This note was inserted by a clerical error.

A subscriber has suggested that the stamp might be charged at the rate of 2s. 6d. for every £5 of the sum periodically payable as being " for the term of life or any other indefinite period ", but the better opinion appears to be as set out in the note, *viz.*, 2s. 6d. per cent. on the total amount payable under the deed for the whole of the eight years as being " for a definite and certain period so that the total amount to be ultimately payable can be ascertained ".—ED.

Form 21.

Power of Attorney Pursuant to Section 25 of the Trustee Act, 1925, Given by a Trustee Going Abroad and Extending to all Trusts of which he is Trustee (*a*).

Drafted by A. H. Withers, of Lincoln's Inn.

KNOW ALL MEN by this POWER OF ATTORNEY that I —— of *etc.* hereby declare and appoint as follows:—

1. I AM about to go abroad and intend to remain out of the United Kingdom for a period exceeding one month.

2.—(a) THIS DEED is executed by me in exercise of the power in this behalf conferred on me by section 25 of the Trustee Act 1925 and of every or any other power enabling me in this behalf.

(*a*) Stamp 10s. The power given to trustees by s. 25 of the Trustee Act, 1925, to delegate the execution or exercise during absence from the United Kingdom of any trusts, powers and discretions is new and the due exercise of the power depends on a strict compliance with the provisions of the section. Under sub-s. 3 the power does not come into operation until the donor is out of the United Kingdom and is revoked by his return. Sub-s. 4 provides that the power shall be attested by at least one witness and filed at the Central Office within ten days after its execution, together with a statutory declaration that the donor intends to remain out of the United Kingdom for a period exceeding one month.

This form extends to all trusts of which the donor is a trustee. Unless the intention is to limit the power to a particular trust it is generally advisable to make it extend to all trusts and not, as in the next precedent, limit it to specified trusts. In many cases the donor may not find it easy to complete a list of the trusts in which he is acting and which may require to be administered during his absence.

(b) In this deed the words "trusts" and "trustee" (*b*) have the same meanings as they respectively have in the said section of the said Act.

3.—(a) I HEREBY DELEGATE to A of *etc.* [and B of *etc.*] (hereinafter called "my Attorney" [*or*, "Attorneys" jointly and to each of them severally (*c*)]) the execution and exercise during my absence from the United Kingdom of all trusts powers and discretions vested in me as a trustee either alone or jointly with any other person or persons.

[(b) (*d*) Such delegation extends in the fullest manner possible to all trusts and trusteeships however numerous and of whatever character the same may be or become and (in particular) to the trusts mentioned in the Schedule hereto.]

4. I HEREBY APPOINT my Attorney [*or*, my Attorneys jointly and each of them severally] to be my Attorney [*or*, Attorneys] for me and on my behalf and in the name of myself or otherwise to execute and do or join in executing and doing all such deeds instruments acts (*e*) and things as shall be required or proper to be executed or done in or about the execution or exercise of the said trusts powers and discretions or any of them as fully and effectually as I myself could have executed or done or joined in executing or doing the same.

(*b*) By sub-s. 11 of s. 25 "Trustee" is defined as including a tenant for life and a statutory owner, and, in view of the definition in s. 68 (17), it also includes a personal representative.

(*c*) If the power is to be exercised by one of the attorneys, they must be appointed severally as well as jointly: *Guthrie* v. *Armstrong*, 5 B. & Ald. 628.

(*d*) The words in brackets are superfluous but may be useful as emphasising the extent of power. It is sometimes convenient to specify in a general power certain trusts with which it is apprehended the donee will be called upon to deal.

(*e*) It has been suggested that as companies do not recognise trusts an express general power should be given to deal with stocks, shares and debentures and also to operate banking accounts, so as to obviate any need for the company identifying the trustee or ascertaining his powers. In practice it does not seem that such a power is required. Appointments of attorneys under s. 25 are not sufficiently numerous for any defined practice to have arisen amongst companies, but it appears that companies act under a power in this form. In view of the terms of sub-s. 10 it is clear that a company giving effect to the acts of a donee of a power under s. 25 is not affected with notice of the trust.

5. PROVIDED ALWAYS (*f*) that nothing herein contained shall authorise any person to execute or exercise any trust power or discretion vested in himself and myself alone as sole trustees of any trust.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

[*Particulars of the Trusts specifically referred to in the above-written Power of Attorney—see Schedule to next Precedent.*]

Form 22.

Power of Attorney Given by a Trustee Going Abroad and Limited to Specified Trusts (*a*).

Drafted by A. H. Withers, of Lincoln's Inn.

KNOW ALL MEN by this POWER OF ATTORNEY that I —— of *etc.* hereby declare and appoint as follows:—

1. I AM about to go abroad and intend to remain out of the United Kingdom for a period exceeding one month.

2.—(a) THIS DEED is executed by me in exercise of the power in this behalf conferred on me by section 25 of the Trustee Act 1925 and of every or any other power enabling me in this behalf.

(b) In this deed the words "trusts" and "trustee" have the same meanings as they respectively have in the said section of the said Act.

3. I HEREBY DELEGATE to A of *etc.* [and B of *etc.*] (hereinafter called "my Attorney" [*or*, "Attorneys" jointly and to each of them severally] the execution and exercise during my absence from the United Kingdom of all trusts powers and

---

(*f*) In the event of the donor appointing a co-trustee to act as his attorney it seems proper to terminate the donee's authority should he become by reason of deaths the only trustee other than the donor of the power. The insertion of this clause carries out the intention of the proviso to sub-s. 1, which lays down that a person, being the only other co-trustee of the donor and not being a trust corporation, shall not be appointed to be an attorney under the sub-section.

(*a*) Stamp 10s. See the notes to the preceding precedent.

discretions vested in me as a trustee (either alone or jointly with any other person or persons) of all or any of the trusts mentioned in the Schedule hereto.

4. I HEREBY APPOINT my Attorney [*or*, my Attorneys jointly and each of them severally] to be my Attorney [*or*, Attorneys] for me and on my behalf and in the name of myself or otherwise to execute and do or join in executing and doing all such deeds instruments acts and things as shall be required or proper to be executed or done in or about the execution or exercise of the said trusts powers and discretions or any of them as fully and effectually as I myself could have executed or done or joined in executing or doing the same.

5. PROVIDED ALWAYS that nothing herein contained shall authorise any person to execute or exercise any trust power or discretion vested in himself and myself alone as sole trustees of any trust.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

Particulars of the Trusts specifically referred to in the above-written Power of Attorney (*b*).

1. THE TRUSTS of a settlement dated the —— day of —— and made between —— and —— being a settlement of personal estate made on the marriage of the said —— and ——.

2. TRUSTS VESTED in me as one of the personal representatives (*c*) or the sole personal representative from time to time of —— who died on the —— day of —— and whose will dated the —— day of —— (with codicil thereto) proved on the —— day of —— in the —— Probate Registry and all trusts consequent upon or arising out of such representation and in particular such of the trusts vested in the said —— solely at his death as have devolved on his personal representatives or representative from time to time.

(*b*) The trusts specified here are examples of possible trusts.

(*c*) It is necessary to state expressly that the attorney is to exercise the powers of the donor as personal representative. If the power is merely to exercise the trusts of the will the power would not extend to authorise the execution of assents and other acts as personal representative.

3. THE TRUSTS of the said will and codicil and all statutory trusts which have arisen or may hereafter arise thereunder.

4. ALL TRUSTS vested in me by reason of my being the person having the powers of a tenant for life under the Settled Land Act 1925 over any land subject to any settlement constituted by the said will and codicil with or without any other document or documents.

5. ALL TRUSTS (*d*) vested in me by reason of my being one of the Trustees or becoming the sole trustee of any such settlement as last aforesaid for the purposes of the Settled Land Act 1925 or the statutory owner or one of the statutory owners of any land comprised in or subject to any such settlement and in particular any statutory trusts on which any such land may be or become held.

6. THE STATUTORY TRUSTS applicable under the Law of Property Act 1925 to —— by reason of the same having been held at the end of the year 1925 at law or in equity in undivided shares vested in possession.

7. THE TRUSTS of a charity known as ——.

(*d*) It is presumed that a trustee can delegate trusts into which executory trusts may develop—*e.g.*, under the Administration of Estates Act, 1925, ss. 33 and 46—or in the case of the Settled Land Act, 1925, the trustees becoming statutory owners or holding on the statutory trusts.

Form 23.

Stricter Covenant by a Lessee Against Assigning, Underletting, etc. (*a*).

Drafted by Lionel A. Blundell, LL.M., Barrister-at-Law.

And that the tenant will not without the consent in writing of the landlord first obtained assign underlet part with the possession of or permit any other person to become the occupier (whether under a licence trust or otherwise) of the premises hereby demised or any part of them Provided always and it is hereby expressly agreed that such consent as [last] aforesaid shall not be unreasonably withheld.

Form 24.

Staff Superannuation Fund Rules (*b*).

DEFINITIONS AND CONSTRUCTION.

Interpretation and construction.

1.—(1) In these Rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:—

"Act" means the Superannuation and other Trust Funds

(*a*) This form has been drafted in response to a request by a subscriber for such a clause. It has been repeatedly held by the Courts that the ordinary covenant against assigning, underletting and parting with possession without consent does not debar the tenant from allowing other people to use the premises (such as under a trust or a mere licence) provided that he retains the legal possession himself. This principle was re-affirmed by the Court of Appeal in the recent case of *Pincott* v. *Moorstons, Ltd.*, (1937) 1 All E. R. 513; 81 S. J. 136; 156 L. T. 139 (see pp. 281—2 of *The Conveyancer*, March, 1937). It is difficult indeed to frame a satisfactory clause which will protect a landlord from all conceivable modes in which a tenant may permit another person to use the premises without himself parting with the legal possession, but it is thought that the form given here will effectively prevent the more flagrant cases of injury to the landlord by allowing an unsuitable person actually to become "the occupier" of the premises. As it may be doubted whether s. 19 of the Landlord and Tenant Act, 1927, applies to the new part of the covenant, the proviso against unreasonable withholding of consent has been expressly included.

(*b*) These Staff Superannuation Rules have been drawn by Mr. J. J. Somerville, of Gray's Inn, Barrister-at-Law, and 3 Cook Street, Liverpool 2, and Mr. Thomas McArthur of the firm of Messrs. F. Lindsay,

(Validation) Act, 1927, and any other enactment amending or replacing the same and the rules and orders made pursuant thereto.

"Actuary" and "Auditors" mean respectively the Actuary and Auditors of the Association for the time being, if qualified according to the regulations made pursuant to the Act; and in any other case the Actuary and Auditors specially appointed by the Trustees for the purpose of these Rules.

"Arbitrators" means the Arbitrators for the time being appointed by the Rules of the Association to act as Arbitrators in disputes.

"Association" means the —— Association.

"Committee" means the Superannuation Committee established by these Rules.

"Directors", "Secretary", "Treasurer" and "Trustees" mean the respective Directors, Secretary, Treasurer and Trustees of the Association for the time being.

"Fund" means the Staff Superannuation Fund of the Association.

"Retired Member" means a former Member of the Staff who has ceased to contribute to the Fund.

"Retirement" means cesser of employment by the Association through reaching the age prescribed by these Rules or by reason of permanent ill-health, duly certified to the satisfaction of the Directors, and the expression "age of retirement shall have a corresponding meaning.

"Rules" means the Rules of the Staff Superannuation Fund of the Association.

"Rules of the Association" means the registered Rules of the Association and any registered amendment thereof.

"Salary" means money payable by whatever name called to a Member of the Staff for services rendered to the Association.

Elsworth & McArthur, Solicitors, 13 Harrington Street, Liverpool 2, and have been approved by the Registrar of Friendly Societies acting under the provisions of the Superannuation and other Trust Funds (Validation) Act, 1927, and by the Commissioners of Inland Revenue.

"Staff" and "Staff of the Association" means such of the male servants of the Association as, subject to these Rules, are from time to time declared by the Directors to be eligible to contribute to the Fund and to participate in the benefits thereof; and the expressions "Member of the Fund" and "Membership of the Fund" shall have similar meanings.

(2) Unless the context otherwise requires "month" means calendar month; and the singular includes the plural and *vice versa*.

(3) These Rules shall be construed in reference to the current Rules of the Association and shall be deemed to be supplementary thereto.

(4) Nothing in these Rules shall be deemed to interfere with or restrict the right of the Directors to determine the employment of any Member of the Staff.

GENERAL PROVISIONS.

Name and object of Fund.

2.—(1) The name of the Fund shall be "The Staff Superannuation Fund of the —— Association". The office of the Fund shall be the registered office of the Association.

(2) The purpose of the Fund is to provide superannuation allowances on retirement to Members of the Staff of the Association.

Appointment and removal of officers of the Fund.

3.—(1) The Trustees, Treasurer and Secretary of the Fund shall be the respective Trustees, Treasurer and Secretary of the Association for the time being, and shall be respectively appointed and removed in manner prescribed by the Rules of the Association.

(2) Subject to the Actuary and Auditors of the Association possessing the professional qualifications as prescribed by the regulations made pursuant to the Act, the Actuary and the Auditors of the Association for the time being shall be the Actuary and the Auditors of the Fund. If either the Actuary or the Auditors of the Association do not possess the prescribed qualifications as aforesaid, it shall be the duty of the Trustees to appoint at the cost of the Fund a properly qualified Actuary or properly qualified Auditors.

(3) The Trustees, Directors, Treasurer, Actuary and Auditors shall not be eligible for membership of the Fund.

Investments by the Trustees and banking arrangements.

4.—(1) All capital moneys, securities and all real and personal property belonging to the Fund and the current investments representing the same shall be vested in the Trustees and shall be collected, held, invested and disposed of by them in manner prescribed by the Act and by these Rules.

(2) The Trustees shall invest, re-invest or vary the moneys and investments of the Fund as may be recommended from time to time by the Directors in any of the following ways, that is to say:—

(a) In any of the modes of investment authorised by the Trustee Act, 1925, and Colonial Stock Acts, 1887 to 1900; or

(b) In or upon freehold hereditaments or real securities in England and Wales; or

(c) In or upon the Debentures, Mortgages or other securities of any Company incorporated by charter or Act of Parliament on the ordinary capital of which dividends of not less than three per cent. per annum have been paid for five consecutive years preceding the date of investment; or

(d) In or upon the bonds or securities of the —— Board; or

(e) In or upon the securities of the rates of any County Borough or Local Authority in Great Britain and Northern Ireland, or other rates authorised to be levied and mortgaged or charged under Statutory authority.

(3) All moneys and securities appertaining and belonging to and receivable on behalf of the Fund shall be paid into a separate Banking account to be kept by the Treasurer, whose duties in relation to the Fund shall correspond as nearly as possible in the circumstances to the duties prescribed for the Treasurer by the Rules of the Association in respect of the moneys receivable by the Trustees on behalf of the Association. All cheques drawn on the Treasurer on account of the Fund shall be signed by two Directors who are Members of the Committee, and countersigned

by the Secretary. The two directors aforesaid shall be nominated by the Trustees.

Duties of the Secretary.

5.—(1) Subject to these Rules the duties of the Secretary in relation to the administration of the Fund and the Committee shall correspond as nearly as possible in the circumstances to the duties prescribed for the Secretary by the Rules of the Association.

(2) The Secretary shall be a Member of the Fund.

Association to bear expenses of Administration.

6. Subject to the provisions of these Rules the expenses, other than the legal expenses, of the administration of the Fund shall be borne by the Association.

Membership and Contributions.

Entry and retirement.

7.—(1) Subject to the provisions of these Rules, a Member of the Staff of the Association—

(a) between the ages of 18 and 55 years on the appointed day whose average rate of remuneration from the Association exceeds the sum of £1 per week shall be entitled, on application made to the Directors in the form set forth in the Schedule hereto, to membership of the Fund as from the foregoing date.

(b) Between the ages of 18 and 40 years, who enters into the employment of the Association after the appointed day, shall on entry, become, on application to the Directors in the form set forth in the Schedule hereto, a Member of the Fund after a medical examination.

(2) Save as otherwise determined by the Directors, membership of the Fund shall be a condition precedent for further or for future employment by the Association.

(3) For the purposes of the Fund the age of retirement of a Member of the Staff shall be fixed at 65 years of age except in the case of—

permanent ill-health, duly proved to the satisfaction of the Directors, of a Member who has been in the employment of the Association for ten years or over, at such earlier age as the Directors, on the advice of the Committee, shall determine.

Provided that nothing in these Rules shall be deemed to prohibit a Member of the Staff remaining in the service of the Association beyond the age of 65 years.

Contributions of the Staff.

8.—(1) A Member of the Staff shall contribute to the Fund by way of deduction from current salary due or otherwise an amount equivalent to three per cent. of the existing salary payable by the Association, provided always that the Trustees on the certificate of the Actuary and on the recommendation of the Committee may diminish the percentage amount of salary to be contributed to the Fund.

(2) Subject to the recommendation of the Committee, and on the approval of the Actuary, the Trustees may admit a Member of the Staff not eligible under these rules, to special membership of the Fund, and may, subject to the recommendation and approval aforesaid, fix the percentage rate of contribution payable by such Special Member, provided that the percentage rate so fixed shall not be less than the current percentage of salary contributed by the Staff.

(3) The Committee, with the approval of the Actuary, may permit a Member of the Staff who has suffered a reduction in salary, to contribute to the Fund on the basis of his salary immediately prior to the reduction and the contribution of the Association in respect of such member may be fixed, at the discretion of the Directors, on the basis of the salary immediately prior to the reduction.

(4) A separate account, to be called the Contribution Account, shall be kept in respect of each Member of the Fund, and there shall be credited thereto in addition to the contribution of the Member, when the account of the Member is finally closed, and on the 31st day of December in every year, such interest thereon, to be calculated at a rate to be fixed by the Trustees on the recommendation of the Committee, after consultation with the Actuary. If no such rate is fixed, the rate of interest shall be $2\frac{1}{2}$ per cent. compounded annually. Provided always that interest shall not be credited as aforesaid after the date of the Member's retirement.

Contributions of the Association.

9.—(1) The Association shall contribute to the Fund:—

(a) An annual grant of £156 for the period of twenty years or for such longer period as the Directors, on the recommendation of the Actuary, and with the confirmation of the Association given in General Meeting, may deem fit (the first payment to be made on the —— day of ——, 19—) and

(b) Subject to these rules, an amount equivalent to 5 per cent. of the annual amounts payable by way of salary to the Staff and Special Members of the Fund, provided that the Association shall not be liable to contribute on behalf of a Member during any period that such Member ceases to draw salary from the Association.

(2) The annual grant aforesaid shall be deemed to be a voluntary grant on the part of the Association and may be diminished or withdrawn by the Association in General Meeting at any time without notice, and no liability whatsoever shall be incurred by the Association in respect of such diminution or withdrawal.

(3) Subject as aforesaid, the liability of the Association in any event shall be limited absolutely to the payments in this Rule mentioned, and the Association shall not be liable for any loss or debt incurred in the management of the Fund.

(4) Nothing herein contained shall be deemed to prohibit the Association from increasing the annual grant aforesaid or from making further grants to the Fund, provided that such increase or further grants are made on the recommendation of the Directors and confirmed by the Association in general meeting.

(5) The contributions payable by the Association to the Fund and the income receivable from current investments belonging to the Fund shall, after the deduction of:—

(a) interest to be credited to contribution accounts as aforesaid; and

(b) the expense of administration not borne by the Association,

be placed to the credit of a separate account, to be known as the Reserve Account.

Benefits.

10.—(1) On reaching the age of retirement after a period of ten years' service, a Member of the Fund shall be entitled to receive on retirement by way of pension a life annuity for an amount to be calculated as follows, namely:—

One sixtieth part of the Member's average salary during the ten full years immediately prior to the date of retirement shall be multiplied by the number of whole years of service given by the Member, provided that in any event the amount of the annuity payable to the Member shall not exceed one half of the average salary reckoned as aforesaid.

(2) If a Member shall have suffered a reduction in salary and shall have paid the contribution applicable to his salary before such deduction as provided by these Rules, the amount of such salary before reduction shall be regarded as the salary of the Member in calculating the amount of such average salary.

(3) In the event of a dispute as to the amount of pension payable to a Member, the amount payable shall be determined by the Arbitrators, whose decision shall be final and legally binding on the parties.

(4) Pensions payable shall be primarily debited against the Member's contribution account until the credit standing thereto is exhausted, and thereafter the pension payable shall be debited against the Reserve Account, provided always that the Trustees on the recommendation of the Committee, may purchase a British Government or other annuity to meet the liability of the Reserve Account in respect of such pension.

(5) If a Member, having reached the normal age of retirement, remain in the employment of the Association, the pension to which he would have been entitled had he actually retired at the normal age of retirement shall be credited to his Contribution Account, and on the Member's retirement such additional amount of pension shall be payable on account of the sum credited as aforesaid as the actuary shall certify to the trustees.

(6) Pensions shall be payable monthly, but shall otherwise be deemed to accrue from day to day, and the first and last

payments thereof may be apportioned according to the circumstances.

Death of Members.

Death of Member in credit or before pensionable age.

11.—(1) In the event of the death of a pensioned Member before the amount standing to his credit in his contribution account is exhausted, the balance thereof shall be paid to his legal personal representatives, and the liability of the Fund in respect of any further payments shall thereupon cease, provided always that the Trustees in their discretion, and without incurring any liability to the Member's estate, may pay, when the said estate or the residue of the sum standing in the Contribution Account is small, the balance so due to a relative or legatee of the Member without proof of legal representation.

(2) If a Member of the Staff dies before the age prescribed for retirement, his legal personal representatives shall be entitled to receive the amount standing to the credit of his contribution account with accrued interest.

Resignation and Dismissal.

Amount of Member's contributions repayable on resignation or dismissal.

12.—(1) Save as hereinafter provided, a Member of the Staff who voluntarily leaves the service of the Association after the expiration of one or more years of service, but before the age of retirement, shall be entitled to be paid the amount standing to his credit in his Contribution Account with accrued interest.

(2) A Member of the Staff, whose service in the Association is—

(a) in duration less than one year; or

(b) determined by the Directors without any allegation of fraud and dishonesty; or who is requested to resign

shall be entitled to have his contributions to the Fund repaid without accrued interest.

(3) Should a Member of the Staff be adjudged by the Directors to be guilty of wilful dishonesty or fraud or of conduct which would be a ground in law for dismissal without notice, or of striking, the Member shall be entitled to be repaid his contributions without any interest, less such amounts which are in the judgment of the Directors (whose judgment thereon shall be

final) equivalent to the loss sustained by the Association through the conduct of the Member; and such amounts shall be paid by the Trustees to the Association.

(4) In the event of any dispute as to the net amount payable from the fund to a Member who has resigned or who has been adjudged by the Directors to be guilty of the conduct described in the foregoing sub-clause, the decision of the Arbitrators thereon shall be conclusive and legally binding.

(5) The right of any Member of the Staff to any benefit under the Fund in the event of the dismissal of the Member by the Association shall not be a ground for damages or any aggravation of damages in litigation arising out of such dismissal.

(6) In the event of the Trustees being liable to pay income tax on any contributions repaid to an employed person during his lifetime or on any sum which is paid in commutation of or in lieu of an annuity, in accordance with the Finance Acts and the Statutory regulations thereunder made for the time being in force, the Trustees may on making such payments to a Member deduct therefrom an amount equal to the Trustees' liability in respect of such returned contribution and sum paid in commutation of or in lieu of any annuity pursuant to the Acts and regulations aforesaid.

Reinstatement of Member after Resignation.

Reinstatement of Member in the Fund.

13. If a Member of the Staff, after having left the service of the Association, and having been repaid his contributions to the Fund as provided by these Rules, again enters the service of the Association, he shall be allowed to become a Member of the Fund on such terms and conditions as the Trustees, on the advice of the Committee and Actuary, may determine.

Commutation.

Commutation of pension.

14. The Trustees may upon the application of the Member where the amount of the pension is trifling or in exceptional circumstances having regard to his state of health or other special circumstances grant him in lieu or in commutation of the pension to which he is entitled a lump sum payment not exceeding the actuarial equivalent of the pension payable.

Incapacity.

Incapacity of Member.

15. If any Member of the Staff is, by reason of mental incapacity or other cause, unable to manage his affairs, the Trustees may at their discretion pay his pension or any other sum to which he is entitled from the Fund under these Rules to any other person for his benefit.

Forfeiture of pension on bankruptcy of Member and attempted alienation of pension. Protective provisions.

16. If any Member of the Staff before or after he shall have become entitled to a pension from the Fund, shall be adjudged bankrupt, or take proceedings for liquidation in bankruptcy, or make any arrangement or composition with his creditors, having the effect of a charge or alienation of his pension, or shall do or suffer something whereby his pension, if belonging absolutely to him or some part thereof, would become payable to or vested in some other person, he shall forfeit all interest in and right to such pension, and the Trustees shall thereupon pay or apply the same for the maintenance or support or otherwise for the benefit of all or such one or more (exclusively of the other or others) of the following persons, as the Trustees shall, in their uncontrolled discretion, think fit (that is to say): Such Member and his wife and issue for the time being (if any) and (if such Member shall for the time being have no wife or issue living) his parents, grandparents, brothers and sisters. The Trustees shall not be bound by any notice given pursuant to any assignment or charge of interest in the Fund by any Assignee or Chargee.

The Superannuation Committee.

Control of the Fund in the Trustees.

17. Subject to the provisions of these Rules the ultimate control and management of the Fund shall be vested in the Trustees and all executive acts in relation to the Fund shall be done in the name of the Trustees.

Superannuation Committee to be appointed.

18. It shall be the duty of the Directors to cause a Committee to be appointed, to be called the Superannuation Committee, for the purpose of advising and assisting the Trustees in administering and managing the Fund. Every Director shall be eligible for membership of the Committee. The Secretary shall be the Executive Officer of the Committee.

The Committee shall be constituted as follows:—

(a) The Chairman of the Directors for the time being;

(b) Three Directors to be nominated by the Directors;

(c) Two representatives, Members of the Staff, to be elected by the Members;

(d) The Trustees, Secretary and Actuary of the Association for the time being shall be *ex officio* Members.

First Members of the Committee.

19. The first Members of the Committee shall be nominated by the Directors. The Senior of the Members' representatives in point of service with the Association shall be the first of the nominees to retire in rotation, but shall be eligible for re-election.

Chairman and Deputy Chairman of Committee.

20. The Chairman of the Directors shall, if present, preside at all meetings of the Committee. At the first meeting of the Committee in each year after the Annual Meeting of the Members of the Fund, a Deputy Chairman shall be elected by the Committee from the representatives of Members of the Staff. The Deputy Chairman shall preside at all meetings of the Committee in the absence of the Chairman, and shall always preside if present at the Annual Meeting or any special general meeting of the Members. The Secretary shall not be eligible for the office of Deputy Chairman of the Committee or for election as a Members' representative on the Committee.

The appointment of the Representatives of the Directors.

21. The appointment of the representatives of the Directors shall be sufficiently evidenced by an extract in writing from the minutes of the Directors under the hand of the Secretary. It shall not be necessary for the representatives of the Directors to retire in rotation.

Method of election of the Representatives of Members of the Staff.

22. One of the representatives of the Members of the Staff shall retire annually from the Committee, but shall be eligible for re-election. The vacancy aforesaid shall be filled as follows:

(a) the vacancy, and all vacancies on the Committee of the representatives of the Members, shall, as far as possible, be filled at the Annual Meeting of the Members or at a Special General Meeting convened for that purpose.

(b) The nomination and election of candidates for members' representation on the Committee and the procedure in connection therewith, shall follow as far as is practic-

able in the circumstances, the procedure prescribed in the Rules of the Association for the nomination and election of Directors and the Trustees, on the advice of the Committee, may, if necessary, make such regulations for the purpose of conveniently adopting the Rules of the Association to the altered circumstances.

(c) In the event of the failure of the Members to elect a representative to the vacancy, the Directors shall nominate a Member of the Staff to serve on the Committee.

Meetings of the Committee.

23. The Committee shall be convened by the Secretary and shall meet at such time and place as the Committee may from time to time decide. The Committee shall have power to prescribe its own procedure and the frequency of its meetings, but subject to any direction of the Committee to the contrary, the Secretary must convene a meeting of the Committee within seven days following the written request of any Member of the Committee made for that purpose. Three Members of the Committee shall form a quorum.

Proceedings of the Committee.

24. Every Member of the Committee shall have one vote, and every question shall be determined by a majority of votes. In the event of equality the presiding Member shall have an additional or casting vote.

Minutes of the Committee.

25. All transactions of the Committee shall be entered in a Minute Book to be kept by the Secretary, and the minutes of the Committee shall be open at all reasonable times to the inspection of the Directors and the Members of the Committee.

Decisions of the Committee to be reported to the Trustees.

26. All decisions of the Committee shall be reported to the Trustees, who shall, subject to the provisions of these Rules, take such actions in relation thereto as they may deem fit.

Meetings of Members of the Fund.

The Annual Meeting of Members of the Fund.

27. An annual meeting of Members of the Fund shall be held in the month of January in each year, and shall, subject to these Rules be summoned by the Secretary on the direction of the Trustees, and conducted as far as is practicable in the same manner as prescribed by the Rules of the Association for the Annual Meeting of Members of the Association.

Special General Meetings.

28. A Special General Meeting of the Members of the Fund shall be summoned whensoever the Trustees may appoint or when three Members of the Fund shall sign a requisition requesting the Secretary to convene such Meeting. Unless otherwise directed by the Trustees, on the advice of the Committee, the cost of summoning and conducting a Special General Meeting shall be borne by the requisitionists, and a sum of £5 shall be forwarded to the Secretary with every such requisition, and the balance, if any, of the deposit so paid shall be transferred to the Reserve Account.

Chairman at Annual and Special General Meetings.

29. In the absence of the Deputy Chairman of the Committee, the Chairman of an Annual or Special General Meeting of the Members shall be selected from the Members' representatives on the Committee, or if no such representatives are present, from the Members present.

Procedure at meetings of Members of the Fund and the making of minutes.

30. All Members of the Committee shall be entitled to speak and vote at an Annual Meeting or Special General Meeting of Members of the Fund. The Secretary shall record the transactions of such Meetings in a Minute Book which shall be open at all reasonable times to the inspection of the Trustees, the Members of the Fund, and the Directors.

Power to the Trustees to make adoptive Rules.

31. The Trustees, on the advice of the Committee, may make, if necessary, such regulations for conveniently adapting the Rules of the Association in respect of the calling and conducting of Annual and Special General Meetings of Members of the Association to the altered circumstances of the Annual and Special General Meetings of Members of the Fund.

Amendment of Rules.

Procedure on amendment of Rules.

32.—(1) Save as in these Rules provided the power of altering, amending, and cancelling, either in whole or in part, these Rules, shall be vested in the Trustees, and the Trustees shall cause all alterations and amendments whatsoever to be registered in manner prescribed by the Act.

(2) All proposals to alter, amend or rescind these Rules, or any part thereof, shall originate with the Committee, and shall before submission to the Trustees, be brought before an Annual Meeting or Special General Meeting of Members of the Fund for

discussion. An Annual or Special General Meeting of the Members shall have power to make representations to the Trustees in respect of the proposals, and the proposals and the representations, if any, shall thereafter be transmitted immediately by the Secretary to the Trustees. The Trustees, within one month of the receipt of the proposals, may either amend, confirm or reject the proposals, or may refer them back to the Committee, and may order that the proposals, when further considered by the Committee shall be brought before an Annual or Special General Meeting of the Members to receive further representations of the Members thereon. The further representations, if any, so made shall be final and within one month of their transmission by the Secretary to the Trustees, the proposals as further considered shall be either amended, confirmed, or rejected by the Trustees. If the Trustees fail either to amend, confirm or reject, or refer back within one month as aforesaid, the original proposals, the proposals shall be deemed to be confirmed by the Trustees, and it shall be the duty of the Trustees to have the proposals registered as an amendment of these Rules in the prescribed manner.

(3) Any proposed alteration or amendment of these Rules which touches or concerns the financial liability of the Association to the Fund, either directly or indirectly, must receive the approbation of the Directors in writing before confirmation and registration by the Trustees.

(4) No alteration or amendment of these Rules shall affect the statutory objects of the Fund or provide for a return to the Association of any grant or contribution made to the Fund.

Copies of Rules to be supplied to Members of the Fund.

33. Every person having any rights in the Fund, being a person who is or has been employed by the Association shall be supplied, on demand, with a copy of the current registered Rules of the Fund and a copy of all the registered amendments thereto, and it shall be the duty of the Trustees, through the Secretary, to supply copies and amendments.

ACCOUNTS, RECORDS, BALANCE SHEET AND ACTUARY'S REPORT.

Provisions as to Accounts and Records.

34.—(1) The Trustees shall cause full and true accounts to be kept of the Fund and of all sums of money expended, and of all

matters and things for which such sums of money have been disbursed and paid. They shall cause full and true records to be kept of the time of commencement of Membership, of the dates of first contributions, and of all other chronological or other facts necessary or proper to be recorded, and shall also cause a Register of Members to be kept. All such accounts and records shall be kept by the Secretary at the registered office of the Fund.

(2) The accounts of the Fund shall be balanced twenty-one days at least before the day appointed for the Annual Meeting of the Members of the Fund in each year.

(3) Immediately on the books of account of the Fund being so balanced, an exact Balance Sheet shall be made up, which shall exhibit a true statement of the accounts of the Fund.

(4) The Trustees, on the advice of the Committee, shall from time to time determine whether and to what extent, and at what time and places, and under what conditions, the books of accounts of the Fund or any of them shall be open to the inspection of the Members of the Fund or claimants on the Fund, and, save as determined by the Trustees as aforesaid, the books of account of the Fund shall not be open to Members of, or claimants on, the Fund.

(5) The Trustees shall deliver to the Auditors the Accounts and Balance Sheet for the year fourteen days at least before the day appointed for the Annual Meeting of the Members of the Fund, at which they are to be presented, together with all means of vouching and verifying the same; and the Trustees, Committee, Secretary and Treasurer shall give to the Auditors every assistance in their audit.

(6) The Trustees shall cause to be prepared and produced to the Members of the Fund once in every year at the Annual Meeting a Statement of Accounts and Balance Sheet of the Fund up to the 31st December then last inclusive, which shall have been audited by the Auditors and shall, at least once in every five years, cause an investigation and report to be made by the Actuary as to the financial condition of the Fund, and produced as aforesaid.

(7) A copy of the latest Statement of Accounts, Balance Sheet

and Report of the Actuary shall be supplied on demand to every person having any rights in the Fund being a person who is or has been employed by the Association.

(8) A copy of the latest Statement of Accounts and Balance Sheet, or selected particulars thereof may be published in the Annual Report of the Association.

Winding Up.

Procedure on winding up.

35.—(1) In the event of the Association being dissolved or amalgamated with any other Association or body, or its functions being transferred to or undertaken by any other public or private body, or any Government or Local Authority, the balance of the Fund after satisfying all current claims up to the date of such dissolution or amalgamation, and the current investments representing the same and the income thereof, shall (provided no Society or other body to be approved of by the Trustees, on the advice of the Committee, shall undertake the purposes and obligations of the Fund, pursuant to these Rules) be applied in manner following:—

(a) in the purchase from the Governments of Great Britain and Northern Ireland or from an Assurance Company, or other such Company, with substantial reserves dealing in annuity business, and having a registered office in Great Britain or Northern Ireland in the name of the existing pensioners or beneficiaries pensions of the same amounts as the subsisting pensions; and

(b) after providing for the pensioners and beneficiaries in manner aforesaid and for all reasonable charges and expenses incurred or likely to be incurred, the Trustees, on the certificate of the Actuary, shall apportion the balance of the Fund among the remaining Members on such basis and in such manner, having regard to the proportionate rights and just claims of each Member, and may in their absolute discretion either pay such apportionments to the respective Members or invest the same in the purchase of either immediate or deferred annuities for the benefit of such Members.

(c) The decision of the Trustees upon any question affecting the winding up or distribution of the Fund, pursuant to the provisions of this Rule, shall not be questioned by Members, pensioners or beneficiaries in any Court of law or equity, but any dispute that arises between the parties or any of them in relation thereto shall be submitted to the adjudication of the Arbitrators of the Association, whose decision thereon shall be binding and conclusive. The award of costs in respect of such references shall be in the discretion of the Arbitrators, who shall have power to charge in favour of the Trustees, a Member's or beneficiary's interest in the Fund with such award.

General Reference of Disputes.

Provision for arbitration.

36.—(1) Save as in these Rules expressly provided for all difference and disputes which may arise concerning and touching the construction and interpretation of these Rules, or the rights, duties and obligations of the Association, Trustees or the parties or persons or some of them in these Rules mentioned, or in connection with any matter or thing arising out of the administration or conduct of the Fund, shall be submitted in writing to the Arbitrators of the Association for the time being whose decision thereon shall in all respects be binding and final, and who shall have power to award the costs, if any, of such reference in such manner as to do justice between the parties to the reference.

(2) Nothing in this Rule shall be deemed to give jurisdiction to the Arbitrators where any question arises as to the liability of the Association to pay or grant moneys to the Fund, and any question as to such liability shall be determined solely by the Directors, whose decision thereon shall be conclusive.

Date of Constitution.

Appointed day.

37. The Fund shall be constituted as from the —— day of ——, 19—, which day shall be called the appointed day.

THE SCHEDULE.

To the Directors of the —— Association.

Form of application for membership of the Fund.

I of hereby request to be admitted to membership of the Staff Superannuation Fund of the —— Association, and certify that the particulars annexed hereto are to the best of my recollection and belief correct.

In consideration of being admitted to membership of the said Fund I agree when called upon to produce a certificate of my birth, and hereby declare that I will observe and obey the Registered Rules of the Fund, and any future registered alterations thereof. And I further agree to be legally bound by the said Rules and to permit the contributions payable by me, pursuant to the said Rules, to be deducted from the emoluments accruing due to me by the Association at the time of payment thereof.

Dated at —— this ..... day of .....

19.....

Signature.....

Witness to the Signature of the Applicant.

.....

PARTICULARS.

Date of birth.....

Whether single or married.....

Names and addresses of next-of-kin.....

.....

.....

Date of Entry into the service of the Association.....

RECEIPT.

I hereby acknowledge the receipt of a copy of the Rules of the Staff Superannuation Fund of the —— Association.

Dated this.....day of.....19.....

INDEX.

[*Black figures indicate Precedents.*]

ABSTRACT,
condition of sale as to contents and delivery of, 230—238, 239, **418**
registered land, what particulars to be supplied, 231, 232

ACKNOWLEDGMENT
of right to production of deeds, **440, 455**
of right to production of grant, should be included in assent by personal representatives, 353, 354

ADMINISTRATION,
appointment of additional personal representative by Court, 371

AGRICULTURAL HOLDING,
tenant of, may give notice to give up entire holding on receiving notice to quit part, 408

AIR NAVIGATION ACT, 1936,
acquisition of land for aerodromes and protection against obstruction, 187—190

APPORTIONMENTS,
condition of sale as to
outgoings, 20, 28, 29
rates, 29
rents and profits, 20

ASSENT
by general executors of deceased tenant for life in favour of remainderman absolutely entitled, form of, **430**
by personal representatives, importance of, 352—355
memorandum of, should be endorsed on the grant, 353, 355
should include acknowledgment of grant, 353, 354
where property is devised to the representative, 353

ATTORNEY, POWER OF. *See* POWER OF ATTORNEY.

AUCTION,
conditions of sale on sales by—
bidding, as to, 6
retractation of, 10, 11
lots, division into, 6
withdrawal of, 6, 10
reserve price, 6, 7
vendor's right to bid, 6—9
when sale is " without reserve ", 7, 8

AUCTIONEER,
authority of, to sell without reserve, 9
to sign memorandum of sale, 11
disputes, power to determine, 6
is agent for both parties, 11
payment of deposit to, 17

BANKRUPTCY,
avoidance of voluntary settlements, 393

CARAVAN TRAILER,
agreement for hire of, form of, **445**

CHARITY,
conveyance by trustees of two parcels of land held on different charitable trusts, part being subject to manorial rights, **453**
cy-près doctrine applied where charitable intention shown, 274
deed of covenant to pay annual sum to charity for period exceeding six years, **456**

COMPANY,
how far able to act under power of attorney given by trustee under section 25 of Trustee Act, 1925...458

COMPLETION,
condition of sale as to, 19—28
place of, 19, 25, 26
possession to be given before, 116
on, 20, 26—28
tenants, when land in possession of, 27
time for, 19
made of the essence by reasonable notice, 23
not of essence of contract, 20, 21
exceptions, 21
where interest is payable, 22, 23
where vendor shows no title on the abstract, 24
contracts to give vacant possession, 28

CONDITIONS OF SALE OF LAND, 3—29, 116—135, 230—260, 297—325
And see under subject-matters of the conditions: VENDOR AND PURCHASER.
conditional on completion of other contracts to purchase adjoining land, form of condition, **419**
" contract by correspondence ", 4
Law Society's conditions, 4
national conditions, 4
prohibited by Law of Property Act, 1925—
restrictions on purchaser and lessee's choice of solicitor, 312, 313
provincial conditions, 5
statutory, 3, 4

CONTRACT. *And see* CONDITIONS OF SALE.
for purchase of site for factory or large building, with special power of rescission by purchaser if plans are not approved, **417**
rectification of, evidence of intention prior to completed contract, 73, 74
repudiation of, by purchaser, when vendor shows no title on delivery of abstract, 24
negotiations after knowledge of defect, effect of, 25

CONVEYANCE
by separate acts of trustees of two parcels of land held on different charitable trusts, part of land being subject to manorial rights, 456
" free conveyance ", meaning of, opinions of Law Society, 314

COSTS
incurred by mortgagee in defending his title, not within judicial discretion, 362
in relation to notice of forfeiture of a lease, can the lessor recover? 261—266
of vendor and purchaser, where " free conveyance " offered, opinions of Law Society, 314

CY-PRÈS DOCTRINE
where charitable intention shown, 274

DAMAGES,
purchaser entitled to, when vendor in default, 119, 120, 122

DEED,
grant of easement " as at present enjoyed " refers to quality of user and not to quantity—distinction between this phrase and " as at present used ", 365
omitted words in common form, construction, 364, 365

DEPOSIT,
condition of sale as to payment of, 16, 17
interest on, when paid to agent or stakeholder, 17, 18
misappropriation of, 18
paid to agent or stakeholder, 17, 18
on sale by trustees, 19
purpose of, 17
recovery of, by purchaser, 303, 305—310

EASEMENT,
apparent and continuous, drainage through breach in sea wall, 71
grant " as at present enjoyed " refers to quality of user and not to quantity—distinction between this phrase and " as at present used ", 365
right of way, " actually enjoyed as of right and without interruption ", Rights of Way Act, 1932...72

ESTATE DUTY.
accumulations of income during minority, 292, 293, 380
settled property, on, basis of valuation of life interests, 289
on determination of discretionary trust, 378, 379
where cash reserves of firm pass to surviving partners, 290—292
where legacies are payable partly out of real estate, 289, 290

EXCHANGE,
form of deed of, freeholds, one parcel subject to debenture trust deed, 438

FINANCE ACT, 1936, ss. 18, 21...30—52, 136—156 *And see* INCOME TAX.

FISHERY,
interference actionable without proof of damage, 76

HIRING AGREEMENT
for caravan trailer, form of, 445

INCOME TAX,
agreement not to deduct tax, rule 23 of General Rules, 288
annuity given "clear of all income tax", annuitant is trustee of right to repayment, 89, 170
payable but not demanded by annuitant, not part of his taxable income, 180, 181
children, settlements in favour of, section 21 of Finance Act, 1936...40—52
definitions, 50
children attaining twenty-one, 42, 43
"irrevocable settlements", 40—42, 48, 51
repayment of tax, 47, 48
executors trading, 181, 182
gift in will "without deduction of income tax", whether free of tax, 169, 170
partner, payment on account of interest of deceased, whether income or capital, 377
privately controlled companies, section 19 of Finance Act, 1936...136—142
"control over the company's affairs", 138—140
privately controlled holding companies, section 20 of Finance Act, 1936...142—146
"loan creditors", 144—146
Schedule A, deduction of, from ground rent, by mesne landlords after obtaining relief for vacant tenements—jurisdiction of Court ousted by that of General Commissioners under rule 22...372
valuation, time limit for, Finance Act, 1930...182, 183
by a person of skill, Income Tax Act, 1918, s. 138...184
who is the occupier?...286—288
wife's income, liability of husband, years when wife was unmarried and resident abroad brought into computation, 375, 376
of executors of husband, 376

INCREASE OF RENT, ETC., ACT, 1920,
"net rent" less the "rates chargeable", amount of deduction where landlord pays a compounded rate, 89

INCREASE OF RENT, ETC., ACT, 1933,
tenant must prove that the house is controlled—distinction in case of class C house, 88
whether section 2 can recontrol a house already decontrolled under 1923 Act, 373, 374

INTEREST
on purchase-money in absence of special stipulation, 123—126
Law Society condition as to, 127
comments on, 127—135
"delay owing to any unforeseen obstacle", 133
"for any cause whatever", 131
"if the purchase is not completed", 133
"purchaser in default", 132, 133

INVESTMENT,
clause designed to give a very wide scope, form of, 451
moderately wide scope, 402

LAND REGISTRATION. *See* REGISTERED LAND.

LAND REGISTRATION ACT, 1936,
comments on, extension of compulsory registration, 94
indemnities, provisions as to, 94
Middlesex Registry searches, provisions as to, 94, 95

LANDLORD AND TENANT. *And see* LEASE.
agreement for letting seats in a stand to view a procession, form of, **409**
breach of covenant, measure of damages is injury to reversion, 175, 176
commencement of term, where lease granted subsequently to building agreement—Law of Property Act, 1925, s. 84...84, 85
covenant to produce assignments and underleases of the demised premises or any part thereof extends to sub-underleases, 280, 281
deduction of Schedule A tax from ground rent by mesne landlords who had obtained relief in respect of vacant premises—jurisdiction of High Court ousted by that of General Commissioners, 372
demolition under dangerous structure notice not eviction by title paramount, not a frustration of the lease and not breach of covenant for quiet enjoyment, 282—285
estoppel, liability for rent, etc., by, 85, 86
" fair wear and tear ", meaning of exception of, 277—280
" improvements " under Landlord and Tenant Act, 1927, s. 19, how far alterations can be said to be, 82—84
lease or licence, lettings of theatrical premises, 174, 175
notice of forfeiture of, can lessor recover costs incurred in connection with?... 261—266
notice to quit part, on severance of reversion, form of, **407**
validity of, 178, 179
nuisance by landlord on adjoining land, no claim by tenant where nuisance existed at the date of the lease, 271
caused in pulling down lessor's adjacent property, construction of clause in lease negativing right to compensation, 176, 177
parting with possession of premises, form of strict covenant against, **462**
what amounts to, 281
quiet enjoyment, covenant for, unauthorised acts of other tenants not a breach of, 86, 87
rent restriction cases. *See* INCREASE OF RENT, ETC., ACTS.
trade premises, lease or underlease of, form of, **422**

LAW REFORM (MARRIED WOMEN AND TORTFEASORS) ACT, 1935,
comments on, as affecting beneficial trusts in marriage and other settlements, 97—115
abolishes restraint on anticipation, 98, 102
advancement, power of, 112
bankruptcy, 104
determinable interests, 103
does not apply to Scotland or Ireland, 97
protective trusts, 105, 106, 111
separate use, effect of expression, 99—101
tenancy by the curtesy not abolished, 115
ultimate trusts of settlement, 107—111
improper, duty of solicitor, 111

LEASE
by mortgagor not under the statutory power, effect of, 363, 364
form of repairing lease or underlease of trade premises settled on behalf of lessee for seven, fourteen or twenty-one years, **422**
power to tenant to determine lease, form of, **433**
strict covenant against assigning, underletting, etc., **462**

LEGITIMACY ACT, 1926,
legitimation *per subsequens matrimonium*, right to take under a disposition, 273, 274

LUNATICS,
real estate of intestates, 62—66

MIDDLESEX REGISTRY,
dealings with land formerly subject to, 356—358
searches to be made on, 356—358
Land Registration (Middlesex Deeds) Rules, 1936, text of, 434, 435
office copy of memorial, application for, form of, **434**
official searches of Index Map, plan and fee not now required, 294

MORTGAGE,
common form restriction on power of mortgagor to grant lease,
not broken by lease not under the statutory power, 363, 364
desirability of amending the common form, 364
contribution on assignment of part of mortgaged property, 269, 270
priority of, equitable interests, Law of Property Act, 1925, s. 113...77
sub-mortgage by way of collateral security, by mortgagee entitled to a moiety of moneys charged as capital and assets of a share in a partnership business, **412**

MORTGAGEE,
costs incurred in defending security, not within judicial discretion, 362
no right to retain title deeds where mortgage extinguished by non-payment or acknowledgment for twelve years, 364

NOTICE TO QUIT
agricultural holding, of part of, 408
on severance of reversion, 178, 179
form of, **407**

NUISANCE,
no implied grant to commit, by acceptance of lease of adjoining land from person committing nuisance, 271

PERPETUITIES, RULE AGAINST,
distinguished from possibility rule, 385, 386
limitations following limitations void for remoteness, 167—169, 199
points to be recollected in drafting, 193—217
charities, 215
class gift, 196
contracts not affected by the rule, 203
general and special powers, 197, 198
possibility rule, *Whitby* v. *Mitchell*, 213
terminable fee in real estate, 205—209

POWER OF ATTORNEY
by trustee going abroad and extending to all trusts of which he is trustee, section 25 of Trustee Act, 1925...**457**
limited to specified trusts, **459**

PROCESSION,
agreement for letting seats in a stand to view, **409**

RATING,
distinction between valuation and rating, 218
gross value, 219
reduction of assessments, 218—229
London, 225—228
outside London, 228, 229
uniformity in assessments, 224
user as a factor in valuation, 221

REAL PROPERTY,
moveable fee simple, lot meadows, 53—61

RECITALS,
accumulations of surplus income, **405**
addition of funds to settlement, possibility of, **394**
agreement for advance, **413**
creation and sale of rentcharge, **441**
exchange, **439**
sale, **453, 454**
assent by personal representatives, that none has been made, **431**
debenture trust deed and power to release parcels, **438**
supplemental, **439**
investment of surplus income, **405**
legal charge, **441**
order of Charity Commissioners, **453, 454**
power of revocation in voluntary settlement, that none is desired, **394**
severance of reversion expectant on lease, **407**
state of mortgage debt, **413**
supplemental to original settlement, **405**
title to parcels to be exchanged, **438**
of charity trustees, **453**
of deceased, to freeholds and leaseholds, **431**
of vendor, **441**
of settlor and transfer of investments to trustees of settlement, **393**
subject to manorial rights, **454**
twenty years old, to be *prima facie* evidence, 311

REGISTERED LAND. *And see* LAND REGISTRATION ACTS.
advantages of registration, Land Registry pamphlet No. 96...185—187
index map, plan not required for official search in, 95, 96
leases of, problem of, 344—351. *And see* LEASE.
official searches, extended time for protection, 294, 295
overriding interests, 235—238
rectification of register, none against *bona fide* chargees in respect of voidable transfer to chargor, 362
report of Chief Land Registrar, 1936, discussion of, 380—382
restrictive covenants affecting, 326—343. *And see* RESTRICTIVE COVENANTS.
vendor bound to furnish particulars of entries and copy of plan, 230—232

RENTCHARGE
by company, registration of, with Registrar of Companies, 318
condition of sale of, 315—321
of property subject to, 315, 321—323
covenant to pay, unnecessary on grant of, 321
grant of, out of land subject to mortgage, with concurrence of mortgagees, **441**
last receipt for, conclusive evidence of payment and performance of covenants, 321, 322

RENTCHARGE—*continued.*
powers of person entitled to, to enforce payment, 318—320
redemption of, statutory provisions as to, 322—325
title to be shown on grant of, 316, 317
on sale of, 315—321
of property subject to, 315, 321—323

REQUISITIONS
as to deeds prior to root of title, 300—304
condition as to time for delivery of, 239—249, **418**
when going to the root of title, 243—245
when relating to matters of conveyance, 245
waiver of period for requisitions, 246, 247, 249
of requisitions, by purchaser, 247

RESCISSION,
condition of sale as to, 250—260, **418**
right must be exercised in good faith, 254
special clause in favour of both parties if plans not approved by competent authority, etc, **420**
what will prevent vendor from rescinding, 256—259

RESTRICTIVE COVENANTS,
benefit passing to owners of adjoining or adjacent land, 74, 75
effect of registration under Land Charges Act, 1925...76
modification of, delay does not prevent claims for compensation, 271, 272
registered land, affecting, 326—343
discharge of registered covenants, 338—340
protection by entry of notice of benefit, 340—343
form of application for, 341
of burden against servient tenement, 327—329
effect of entry of notice, 334—337
of non-entry of notice, 337
entry of notice, 331—333
form of application for, 331

REVIEWS,
Calton : Conveyancing, Land Registry, and Probate and Administration Costs, 67
Carr : Conveyancing Costs, 295
Cripps : Law Relating to Church and Clergy, 383
Eldridge : Index to Conditions of Sale, 67
Frazier : Tithe Act, 1936, and Rules thereunder, 192
Konstam : Law of Income Tax, 190
Meston : Housing Act, 1936...192
Public Health Act, 1936...296
Williams : Vendor and Purchaser, 68

SEA WALL,
right of drainage through, breach in, Land Drainage Act, 1930...71
cannot be acquired by prescription, 367, 368

SEARCHES
to be made in Middlesex register on dealings with land in that county, 356—358

SETTLED LAND ACT, 1925,
estate ownership and beneficial interest distinct entities, 268, 269
persons having the powers of a tenant for life, 359, 361
power of the Court to authorise unauthorised transactions, even diminishing the estate, 267, 268
relation between trust for sale and settled land, "immediate binding trust for sale", 359, 360

SETTLEMENTS,
clauses in:
additional funds, as to settlement of, **395**
power of appointment over, **395, 396**
advancement, power of, **401**
children, trusts in favour of, **400**
life interest to wife, power to appoint, **400**
gross sum, power to trustees to raise, **397**
professional trustee, **404**
protective trusts, property to be held on, **398**
revocation, power of, **407**
trustees, appointment of new, **404, 407**
powers of, **402—404, 406**
ultimate trusts, **401**
voluntary, avoidance of, in bankruptcy, 393
by young man of his own property on protective trusts, powers to add further property and to alter settlement, **393**
of investments in hands of trustees representing accumulations of income and provisions for investing surplus income, **405**
power of revocation, advisability of, 394

SOLICITOR,
conditions preventing purchaser or lessee from employing his own solicitor are void, 312, 313
will of, disposing of practice, provisions for son, when qualified, to take over the business, **446**

SPECIFIC PERFORMANCE,
respective positions of vendor and purchaser in actions for, 305

STAFF SUPERANNUATION FUND,
form of rules for, **462—480**

STAMPS,
agreement for hire of caravan trailer, 445
letting seats to view procession, 409
assent by executors of tenant for life, 430
conveyance, 453
deed of exchange, 438
deeds of dissolution of partnership, on, 147—166
"free conveyance", where vendor offers, stamp duty included, 314
power of attorney, 457, 459
series of transactions, several purchases at auction by separate contracts and conveyances, 270, 271
sub-mortgage by way of collateral security, 412
voluntary settlement, 393, 405

TITHE,
conversion of, into annuity, by Tithe Act, 1936...96

TITLE,
acceptance of, by taking possession before completion, 117, 118
commencement of, condition of sale as to, 297—314
where title commences with a will, 297, 298
length of title, 299
requisitions as to prior title, 300—304
rentcharge, to be shown on grant of, 316, 317
on sale of, condition as to, 315—321
of property subject to, condition as to, 315, 321—323

TITLE DEEDS,
mortgagee has no right to retain, where mortgage extinguished by non-payment or no acknowledgment for twelve years, 364

TRADE PREMISES,
repairing lease of, for seven, fourteen or twenty-one years, settled on behalf of the lessee, form of, **422**

TRUST CORPORATION,
power in will to appoint, with power to charge, form of, **436**

TRUST, TRUSTEES,
duty of trustees to transfer to beneficiaries absolutely entitled, 272
statutory power of maintenance, what is "contrary intention", 272, 273
power of attorney by trustee going abroad, under section 25 of Trustee Act, 1925, limited to special trusts, **459**
extending to all trusts of which he is trustee, **457**
professional, power to charge, **404, 436**

VALUATION,
condition of sale as to purchase of timber, etc., at a, 12—16
"at a fair valuation", 14

VENDOR AND PURCHASER,
alterations in deed presumed made prior to execution, 173, 174
contract "subject to purchaser's solicitor approving the lease"—solicitor can refuse to approve on any reasonable ground—Court will look at the documents to see whether refusal is unreasonable, 365, 366
leaseholds with covenant against parting with possession—consent refused—purchaser must exercise the option provided in the contract, 281
notice, how far purchaser affected by, 299, 300
plan on conveyance, whether purchaser can require, 172, 173
specific performance, respective positions of vendor and purchaser in actions for, 305
vendor must take all reasonable steps to implement his contract, 306

WILL,
accumulations rule, *Saunders* v. *Vautier*, 371, 372
charity to be chosen after death of annuitant who lived more than twenty-one years, 80, 81
partial intestacy, 171, 276
condition *in terrorem*, 78, 79

WILL—*continued.*
construction, bequest in blank, 274, 275
" forgive and release all sums owing to me ", advances to friends and debts from company to deceased as shareholder released, not money on current account at bank, and debts due to testator's business where will provides for it being carried on, 368, 369
gift " absolutely " held on trust, attestation by beneficiary, 171, 172
" home and personal belongings "—whole residue passed, 276
" investment "—money on deposit, 275
" my heir or heirs-at-law ", 78
contingent legacy, liability for legacy duty, 170, 171
executor, appointment of, but no beneficial gift, intestacy, 80
of solicitor, disposing of practice, with power to son to take over the business when qualified, **446**
of widower, strict settlement of English and Irish real estate for longest possible period, **385**
addition to above form, **435**
power in, to appoint trust corporation as trustee, with power to charge, form of, **436**
secret trust, will framed so as to allow directions to be given after the date of the will—validity, 369, 370

BIBL. LONDIN. UNIV.

Printed in Great Britain by The Eastern Press, Ltd., London and Reading.